

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

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In Re:	)	
	)	Case No. 08-61570
	)	
Yellowstone Mountain Club, LLC,	)	
	)	
Debtor.	)	

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THE HON. RALPH B. KIRSCHER, presiding

TRANSCRIPT OF PROCEEDINGS

Butte, Montana  
January 13, 2009

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1 YELLOWSTONE MOUNTAIN CLUB BANKRUPTCY

2 BUTTE, MONTANA

3 - - -

4 BE IT REMEMBERED THAT this matter came on for hearing  
5 on January 13, 2009, in the United States Bankruptcy Court,  
6 District of Montana, The Hon. Ralph B. Kirscher, presiding:

7  
8 The following proceedings were had:

9  
10 THE COURT: There are several matters in  
11 Yellowstone Club, 08-61570, including motion of Wells Fargo  
12 Equipment Finance to modify stay; order to show cause why  
13 the Court should not lift stay to allow Credit Suisse to  
14 proceed with enforcement of promissory notes; objection of  
15 Credit Suisse to order granting debtors' application to  
16 employ Mr. James and the law firm of Moulton Bellingham;  
17 also, objection by the unsecured creditors committee to the  
18 order appointing Mr. James and Moulton Bellingham; also,  
19 objection of ad hoc group of Class B unitholders to that  
20 order.

21 Also, there's hearing on approval of stipulation  
22 by Credit Suisse and the official committee of unsecured  
23 creditors regarding enforcement of collection of promissory  
24 notes; and objection by the ad hoc group of Class B  
25 unitholders; also, the debtors have filed an objection to



1 that stipulation.

2 I believe those are the matters that have been  
3 set. I may have missed something. If I have, we'll take  
4 it up as you properly notify me and tell me that I've  
5 missed something.

6 And I guess, Mr. Patten, you are ready to do so.

7 MR. PATTEN: Good morning, Your Honor. Andy  
8 Patten for the debtors.

9 We've entered into a stipulation with Wells Fargo  
10 that resolves their motion for relief from the stay.

11 THE COURT: Okay.

12 MR. PATTEN: I signed it yesterday and returned  
13 it to Mr. Dye, and I thought it would be filed by now. But  
14 it essentially provides for payment of adequate protection.  
15 And Wells Fargo will be withdrawing its motion.

16 THE COURT: Okay, withdrawing their motion.

17 MR. PATTEN: Yes.

18 THE COURT: Okay. If it hasn't been filed, I  
19 grant you five days to get it filed.

20 MR. PATTEN: Thank you.

21 THE COURT: And it may have already been filed,  
22 as you've --

23 MR. PATTEN: Thank you.

24 THE COURT: -- as you've stated. We'll issue an  
25 appropriate order upon receipt.

1 Let's state our appearances for the record.

2 We have Credit Suisse kind of squeezed into the  
3 corner here, but, anyway --

4 MR. CHEHI: Mark Chehi of Skadden-Arps for Credit  
5 Suisse as agent to the prepetition lenders, along with my  
6 partners Rob Saunders and Evan Levy.

7 THE COURT: Okay.

8 MR. COLEMAN: Shane Coleman of Holland & Hart,  
9 also for Credit Suisse.

10 MR. CUFFE: Matt Cuffe, Your Honor, Warden Thane,  
11 for the Class B ad hoc members committee.

12 MR. WHITMORE: And, Your Honor, Clark Whitmore  
13 from the law firm of Maslon, Edelman, Borman & Brand as  
14 counsel for the Class B ad hoc committee.

15 THE COURT: Okay.

16 MR. MOORE: Paul Moore, counsel for CrossHarbor  
17 Capital.

18 MR. COSSITT: Jim Cossitt, Kalispell, local  
19 counsel for the unsecured creditors committee.

20 MR. BECKETT: Good morning, Your Honor. Tom  
21 Beckett - Parsons, Behle & Latimer in Salt Lake City - for  
22 the unsecured creditors committee.

23 THE COURT: Okay. Mr. Patten, you've already  
24 made your appearance.

25 MR. GRANT: John Grant for the ad hoc committee.

1 THE COURT: Okay. Any other --

2 MR. ALTER: And, Your Honor --

3 THE COURT: Yes.

4 MR. ALTER: -- Jonathan Alter from Bingham  
5 McCutchen, also on behalf of the members committee.

6 THE COURT: I almost missed you there, yes.

7 Who else?

8 MR. GUTHALS: Your Honor, in Billings, this is  
9 Joel Guthals on behalf of Timothy J. Blixseth.

10 THE COURT: Okay.

11 MR. DOAK: And in Billings, this is Jon Doak on  
12 behalf of the Edwards Law Firm and James Murphy.

13 TRUSTEE McKAY: Your Honor, Dan McKay from Great  
14 Falls, appearing on behalf of the U.S. Trustee's Office.

15 THE COURT: Any others that wish to make  
16 appearances for the record? Seeing none, we'll proceed.

17 They're really all kind of interrelated here. I  
18 think the best way to do it is I'm just going to deal with  
19 these kind of in the aggregate. Let's deal with -- because  
20 they're all kind of related at this point. Initially, I  
21 got this started with the order to show cause, so let's  
22 start with that, show cause why the Court shouldn't lift  
23 the automatic stay to proceed with enforcement of the  
24 notes. Obviously tied with that now is the stipulation  
25 between Credit Suisse and the official unsecured creditors

1 committee as to how they would like to proceed.

2 We also have the application filed by the debtor,  
3 which this Court automatically grants, to which there are  
4 objections regarding the retention of Mr. James and the  
5 Moulton Bellingham firm to proceed and pursue collection on  
6 those notes.

7 I think with that, Mr. Patten, why don't I have  
8 you proceed as to Debtors' position on these matters?

9 MR. PATTEN: Your Honor, the debtors' position is  
10 that there is no cause to lift the automatic stay; and,  
11 further, that there is no cause to take from the debtors in  
12 possession the power and duty to collect these promissory  
13 notes and to give that power to either the official  
14 committee or the Credit Suisse.

15 We have commenced action to start collection on  
16 the notes. There's no basis to deny the debtors in  
17 possession the right, I think, as debtors in possession to  
18 collect the notes. The debtors in possession represent all  
19 of the myriad interests involved in this bankruptcy case,  
20 which includes the Credit Suisse, it includes the unsecured  
21 creditors, it includes the Class B members, it includes the  
22 Yellowstone Club members. And so the debtors in possession  
23 are properly the entity to collect the notes. The fact  
24 that there are insider transactions involved are nothing  
25 different and nothing new, and we deal with that all the

1 time.

2 I provided a -- filed an objection late yesterday  
3 afternoon, Your Honor, and cited some cases from other  
4 courts to the effect that before the debtor should be --  
5 debtors in possession should be stripped of the power to  
6 collect -- or to commence avoidance actions, which are  
7 similar, I think, in this case to collecting the BGI notes,  
8 there would have be four conditions met.

9 One, there has to be a showing of a colorable  
10 claim, which I think is plainly met here.

11 Number 2, the debtor in possession has to have  
12 been requested to commence an action on that claim. That  
13 hasn't been met here, hasn't been shown here.

14 Three, the debtor must have unreasonably refused  
15 to commence an action, and that clearly is not met here.

16 And fourth, the party trying to wrestle that  
17 power away from the debtor needs to apply to the Court for  
18 that authority and to take that authority away from the  
19 debtor in possession. And there's been no application made  
20 to the Court to do that.

21 So for all of those reasons, we oppose, the  
22 debtors in possession oppose anyone else collecting these  
23 notes. We believe that there's no showing that the debtors  
24 in possession cannot effectively collect the notes.  
25 There's no showing that the automatic stay ought to be,

1 ought to be lifted, which I think would cause other  
2 problems in terms of Credit Suisse actually foreclosing its  
3 interest in the notes.

4 And, finally, if the Court is concerned that  
5 because of the relationship between the debtors in  
6 possession and BGI - the payor under the notes - and  
7 Ms. Blixseth, the simple solution is to include the debtors  
8 with the same role and responsibilities and powers that  
9 Credit Suisse has under its stipulation with the official  
10 committee.

11 We're happy to be involved and have other people  
12 look over our shoulders and to engage in the collection in  
13 a transparent fashion.

14 THE COURT: Do you think you won't have?

15 MR. PATTEN: No, I don't, which is why I think  
16 the debtor in possession can effectively and properly  
17 collect these notes to begin with. But if other parties  
18 are concerned, then we can do it collectively like Credit  
19 Suisse and the unsecured committee is doing.

20 Your Honor, the collection of these notes is an  
21 asset of the bankruptcy estate, and it accrues to the  
22 benefit of the entire bankruptcy estate which is above and  
23 beyond the creditors alone. The collection of these notes  
24 may be an essential element of the debtors' bankruptcy  
25 plan. And I think by carving out an asset of the estate -

1 (inaudible) - over to entities that may not have the full  
2 interest of the estate in mind but have their own parochial  
3 interest in mind is damaging for the entire estate. And I  
4 think that it's inappropriate to do that.

5 I think that if the debtors are seated at the  
6 table with Credit Suisse and with the official committee  
7 and we proceeded to collect the notes together, that's fine  
8 with me. That allows the debtors to have knowledge of what  
9 is transpiring, what the discovery has uncovered, where  
10 collection of the notes may lead to subsequent transfers.  
11 And I think that that would, at a minimum, be appropriate  
12 in this case.

13 THE COURT: Do you wish to put on testimony?

14 MR. PATTEN: Your Honor, I'm happy to put on  
15 testimony from Mr. James as to his qualifications to  
16 collect on the notes, if the Court would like to hear that.

17 THE COURT: Well, what about any testimony about  
18 the debtors' ability to pursue these claims other than what  
19 you've just stated in attorney argument?

20 MR. PATTEN: I don't think there would be  
21 testimony for that, Your Honor, other than Mr. James'  
22 testimony that he can -- is qualified and capable  
23 of collecting these.

24 THE COURT: Okay. Why don't you call Mr. James?  
25 And then we'll deal with that portion, as well.

1 MR. PATTEN: Very well. I call Doug James.

2 DOUG JAMES, WITNESS, SWORN

3 THE COURT: You know, Mr. Patten, before you  
4 proceed, even though we've called the witness, I just was  
5 looking through my material. There was one thing that I  
6 think all of you have received. And it's unrelated to this  
7 particular matter, but I just wanted to know if, in fact,  
8 anything needs to be done with this. As you may know, I  
9 received a copy of this letter to all parties in interest  
10 from FW Investments, LLC, in Bozeman with copies going to,  
11 I think, pretty much everybody that's in this room.

12 MR. CHEHI: Credit Suisse has not received a copy  
13 of it, to the best of my knowledge.

14 THE COURT: You have not received it. I see  
15 you're not on the list. But it's talking about warehouses  
16 and locations and contents of the storage units. And I  
17 guess I was copied just to bring me in so I would be at  
18 least aware of it.

19 But I guess I'm wondering: Have the parties  
20 dealt with this? Because it involves State Court  
21 litigation, as well, Mr. Lamdin on behalf of American Bank,  
22 and what's happening because of default of utility  
23 payments. Is that part of this case or another case, or  
24 where are we at?

25 MR. PATTEN: Well, Your Honor, it's only part of



1 this case in that prior to the letter that the Court's  
2 received, there was some indication that the FW was going  
3 to exercise its rights under the agisters lien law as a  
4 storage unit. And the information that I received from the  
5 -- I think the Yellowstone Mountain Club is that in  
6 addition to property of Monarch furniture stored in these  
7 various warehouses or storage units, there was property of  
8 the Yellowstone Mountain Club in storage there, as well.  
9 And I notified FW's attorney that the Yellowstone Mountain  
10 Club property could not be sold or liquidated under the  
11 agisters lien statute unless the automatic stay was first  
12 lifted.

13 Subsequent to that, there was discussion and I  
14 think a lawsuit filed against Monarch and maybe  
15 Ms. Blixseth that I understand has been resolved. And the  
16 only remaining issue, as far as I'm aware, is that we have  
17 to identify with particularity what property the  
18 Yellowstone Mountain Club has in these storage units so  
19 they can be segregated from an arrangement for a sale that  
20 I think has been negotiated between FW and American Bank  
21 which has a lien on the furniture, and whatnot, and  
22 Ms. Blixseth.

23 THE COURT: Okay. So as it relates to this  
24 bankruptcy, though, I mean obviously if they're wanting  
25 rent and things like that, that's an administrative expense

1 they're going to have to -- if, in fact, it even governs.

2 How many of you have not received this?

3 Okay. Before you all leave, I will see that you  
4 all receive copies of this so you have it. I'm not going  
5 to do anything with it unless it comes to my attention on  
6 some contested matter.

7 MR. PATTEN: I think the estate's interest in  
8 that, Your Honor, is close to being fully resolved. And  
9 I've been communicating with Mr. Lamdin about that.

10 THE COURT: Okay. You may proceed.

11 MR. PATTEN: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. PATTEN:

14 Q. Please state your name.

15 A. Doug James.

16 Q. What's your address, Mr. James?

17 A. 1570 Westridge Circle; Billings, Montana.

18 Q. Your occupation?

19 A. I am an attorney with the law firm of Moulton  
20 Bellingham, PC.

21 Q. Where are you licensed to practice?

22 A. Montana.

23 Q. How long have you been licensed in Montana?

24 A. Since 1982.

25 Q. In the course of -- and have you practiced law since

1 1982?

2 A. Yes.

3 Q. What's the nature of your law practice?

4 A. My practice is twofold: A large portion of my practice  
5 involves commercial law, representing predominantly lenders  
6 in connection with loans and loan collections,  
7 foreclosures, collection lawsuits, other collection  
8 activities. The balance of my practice involves  
9 real-estate development, predominantly shopping centers.

10 Q. Have you ever practiced before this Bankruptcy Court?

11 A. Yes, that is a substantial part of my practice.

12 Q. Have you had an opportunity to examine the promissory  
13 notes at issue here?

14 MR. PATTEN: And, Your Honor, may I approach the  
15 witness?

16 THE COURT: You may.

17 THE WITNESS: You've handed me Exhibit 1, which  
18 is a promissory note for 5 million -- \$55,798,796.68, dated  
19 September 30, 2005; Exhibit 2, which is a promissory note  
20 for \$208,831,158.45, also dated September 30, 2005; and  
21 Exhibit 3, which is a promissory note in the amount of  
22 7,800,000, dated September 30, 2005.

23 And in answer to your question, yes, I have  
24 examined these notes.

25 Q. (By Mr. Patten) Okay. Do any of the notes present any

1 unique issues or problems, as far as you're aware, in your  
2 collection above and beyond what you deal with ordinarily  
3 in your commercial law practice?

4 A. No.

5 MR. PATTEN: May I approach again, Your Honor?

6 THE COURT: You may approach.

7 Q. (By Mr. Patten) I've handed you what's been marked as  
8 Exhibit 4. Can you identify that?

9 A. Exhibit 4 is a letter dated January 6, 2009, on my  
10 stationery and letterhead addressed to Blixseth Group,  
11 Inc., sent certified mail to a Salem, Oregon address. It  
12 was carbon-copied to the corporation's registered agent and  
13 was also sent by certified mail to another address.  
14 Essentially, this letter is a demand for payment on  
15 Exhibits 1, 2, and 3. And I have received a certified  
16 return receipt back from one of the three copies that was  
17 sent out.

18 Q. And is a demand, in your opinion, necessary in order to  
19 commence a collection action on the three notes?

20 A. Yes. These are demand notes. We've made demand for  
21 payment. If payment is not made promptly, my plan of  
22 action would then be to bring an adversary action to  
23 collect on the notes as well as all interest and attorney's  
24 fees that are incurred as a result of the collection  
25 activities.

1 MR. PATTEN: And, Your Honor, I would move the  
2 admission of Exhibits 1, 2, 3, and 4.

3 THE COURT: Any objection?

4 MR. BECKETT: Your Honor, the committee objects.  
5 I don't think that the witness has firsthand knowledge of  
6 where the notes came from. He testified that he inspected  
7 them and -- but he didn't testify that he had any knowledge  
8 about their making.

9 THE COURT: Well, I concur with your thoughts in  
10 that regard. I'm going to admit them for the purposes that  
11 these are the items that he has reviewed.

12 MR. BECKETT: Thank you.

13 DEBTORS' EXHIBIT NOS. 1 - 4 ADMITTED INTO EVIDENCE

14 BY MR. PATTEN:

15 Q. Exhibits 1, 2, and 3 are signed; is that correct?

16 A. That is correct.

17 Q. Mr. James, does your firm or do you have experience in  
18 collecting notes such as Exhibits 1, 2, and 3?

19 A. Yes, as to myself and as to my firm.

20 Q. Mr. James, have you been pressured or persuaded in any  
21 manner by BGI or by the debtors in possession in this case  
22 to do anything other than your ordinary course of  
23 collection activity in connection with Exhibits 1, 2,  
24 and 3?

25 A. No. And exactly the opposite is true. And it if were

1 anything other than the opposite, I would not have  
2 undertaken this assignment.

3 My practice is to be as aggressive as common sense will  
4 dictate in collection activities. That's how I practice,  
5 that's how I've been successful. In this case, the debtor  
6 in possession has obligations under the bankruptcy code, to  
7 the Court, to its creditors, to its equity holders. And,  
8 you know, my position is that I need to move aggressively  
9 and to utilize all of the resources that are available in  
10 order to enable the debtor to fulfill its obligations. And  
11 I would go so far as to say that those resources would  
12 include my utilizing the assistance of counsel for  
13 creditors, for secured creditors, for the committee, for  
14 equity holders.

15 I'm willing to take assistance and utilize any  
16 resources that I can to recover on these notes to put money  
17 into the debtor-in-possession account. That is my ultimate  
18 objective. How we get from here to there, I will utilize  
19 every resource and pursue every avenue, or I will not be  
20 doing this.

21 MR. PATTEN: Thank you, Mr. James. That's all I  
22 have.

23 THE COURT: Are there parties who wish to  
24 cross-examine?

25 Mr. Beckett.

1 MR. BECKETT: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BECKETT:

4 Q. How do you do, Mr. James? I think I have one question  
5 and maybe a follow-up.

6 Have you had any conversations with Ms. Edra Blixseth  
7 about this engagement?

8 A. Yes.

9 Q. And the next question is a yes-or-no question that  
10 calls for a yes-or-no answer. Can you tell me everything  
11 that she said and that you said in those conversations?

12 A. The conversation that we had was briefly over coffee.  
13 And to the extent of what we discussed, yes. There was  
14 nothing that I would feel at this point that would be  
15 privileged or that I would be precluded from discussing  
16 with you or revealing here in court.

17 Q. But in other conversations with her on this topic, you  
18 would reserve to invoke the attorney-client privilege and  
19 not disclose the content of your communication with her; is  
20 that correct?

21 A. I have no relationship with Edra Blixseth. My  
22 employment would be by the debtor in possession. And the  
23 attorney-client privilege, to the extent that it would  
24 exist, would run to the debtor in possession. I can tell  
25 you that my practice in similar circumstances to this and

1 my recommendation to the debtor and to all parties here  
2 would be that we should pursue the collection of these  
3 notes as aggressively as possible and that the debtors  
4 should to it with the highest degree of transparency  
5 possible, meaning that my recommendation would be, is that:  
6 We should not hide behind the attorney-client privilege to  
7 the extent that it serves the common goal of collecting  
8 these funds.

9 Q. So you would not invoke the attorney-client privilege  
10 in any conversation with her?

11 A. That is for my client to invoke.

12 MR. BECKETT: Thank you.

13 MR. SAUNDERS: Your Honor, may I?

14 THE COURT: You may.

15 CROSS-EXAMINATION

16 BY MR. SAUNDERS:

17 Q. Good morning, Mr. James. My name is Rob Saunders, and  
18 I'm with Skadden-Arps representing Credit Suisse.

19 A. Good morning.

20 Q. In your experience representing creditors in debt  
21 collection matters, from time to time does the circumstance  
22 arise where there is a tactical or a strategic decision to  
23 be made about how to pursue the debt collection matter?

24 A. Yes.

25 Q. Okay. And when those situations arise, would you



1 discuss with your client the pros and cons of the different  
2 options that might be available at that point?

3 A. Yes.

4 Q. Okay. And you would let your client -- subject to your  
5 advice, you would let your client make the decision about  
6 which of those options to pursue, right?

7 A. Yes.

8 MR. SAUNDERS: Okay, no further questions.

9 CROSS-EXAMINATION

10 BY MR. WHITMORE:

11 Q. Mr. James, I'm Clark Whitmore, representing the ad hoc  
12 group of Class B holders.

13 You've testified that you see this, I think, as a  
14 fairly straightforward set of actions to collect some  
15 promissory notes; is that correct?

16 A. No.

17 Q. You don't, okay. Could you explain that?

18 A. It is a collection of three promissory notes.

19 "Straightforward" or "standard" or "ordinary", I would not  
20 use those terms, no.

21 Q. Have you had an opportunity to review the exhibits that  
22 have been provided by the unsecured creditors committee?

23 A. Some of the exhibits. I have not reviewed the entire  
24 docket, but in terms of some of the documentation that's  
25 been filed most recently, yes.

1 Q. Have you had an opportunity to review a copy of the  
2 second amended complaint that was filed in the Greg LeMond  
3 vs. Blixseth Group, Inc., and various other parties in  
4 State Court?

5 A. Briefly, yes.

6 Q. You have reviewed that?

7 A. Correct.

8 Q. And so you're aware of the claims that have been  
9 alleged in that, in that lawsuit; is that right?

10 A. I did briefly review it, saw that there were a number  
11 of claims that were asserted, that is correct. I could  
12 neither summarize them for you nor tell you what they are,  
13 but yes.

14 Q. Do you remember that Claim 26 involved a conversion  
15 claim against Edra Blixseth for \$200 million?

16 A. I do not recall that, no.

17 Q. You don't recall reading that. Do you recall reading  
18 Count 28 involving allegations of a breach of fiduciary  
19 duty against BGI as the manager of the Yellowstone Mountain  
20 Club and the Yellowstone Development Company?

21 A. Specifically, no, but I am generally aware that there  
22 were claims of that nature that were asserted. It was, as  
23 I recall, a very lengthy and unusually long complaint.

24 Q. So did you recall a Count 29, which was a count for the  
25 conspiracy to breach fiduciary duty that was directed

1 against Tim and Edra Blixseth?

2 A. I don't recall that, no.

3 Q. In your review, do you recall reading Count 27 calling  
4 for the piercing of the BGI corporate veil against -- to  
5 assert claims against Edra and Tim Blixseth?

6 A. I don't recall that, no.

7 Q. How about Count 21 involving aiding and abetting breach  
8 of fiduciary duty by the Yellowstone Club World, LLC?

9 A. I would have the same answer to all of the complaints.  
10 My review of the complaint was cursory.

11 Q. Okay. So that would be true of the tortious  
12 interference with the debtors by the Yellowstone Club  
13 World, as well?

14 A. Yes.

15 Q. And the various other claims and counts for alleged  
16 wrongful distributions of money, including the proceeds of  
17 the Credit Suisse loan by Tim and Edra Blixseth and BGI?

18 A. Correct.

19 Q. And you're generally aware, are you not, that the BGI  
20 notes represent money that's owed by BGI to the Yellowstone  
21 debtors; isn't that right?

22 A. I believe that the notes speak for themselves, yes.

23 Q. Okay. But it's your general understanding that those  
24 notes represent perhaps the first stop?

25 When the, when the Credit Suisse proceeds for the loan

1 in 2005 came into the corporation, the Yellowstone debtors,  
2 and left to go to BGI and they left thereafter for parts  
3 unknown, that these notes simply represent the very first  
4 -- potentially, the very first stop in a long series of  
5 complicated and interwoven transactions; isn't that right?  
6 A. Well, let me go back to your first question and finish  
7 my answer to that which I think will also answer this  
8 question. And that is that, as I've stated, these are not  
9 ordinary notes, this is not an ordinary collection, this is  
10 not simply looking at Blixseth Group for collection. If we  
11 could get all of the money out of Blixseth Group, that  
12 would be excellent, but the bankruptcy code as well as  
13 state law provides other mechanisms for collection  
14 including fraudulent transfer claims, preferential transfer  
15 claims. And from my conversations with Mr. Patten and with  
16 others, it certainly appears that there are a number of  
17 claims here that need to be investigated and prosecuted.  
18 And so --

19 Q. Wouldn't it, wouldn't it -- would you agree that these  
20 claims may well be interrelated?

21 A. They may be.

22 Q. Would you agree that it would make more sense to have a  
23 comprehensive review of all of these interrelated claims  
24 before embarking on a collection strategy?

25 A. I don't know that I could agree with that because

1 without beginning the collection strategy, without  
2 initiating collection and making demand and pursuing some  
3 of these avenues to get other information, I don't know  
4 that we're going to have answers to those questions or the  
5 documents and information that we need in order to make  
6 those determinations.

7       You know, the first thing is to make demand on Blixseth  
8 Group, which I've done. The second thing is to look at  
9 where the money went, to follow the money. And at this  
10 point, I don't have the documents or the information to  
11 make that determination or those judgments. And, you know,  
12 without all of that information, I think it's going to be  
13 very difficult to answer.

14 Q. But it's your judgment at this point that it would make  
15 more sense to proceed against BGI Group than to proceed  
16 against Edra Blixseth?

17 A. I can't concede that, no.

18               MR. WHITMORE: No further questions.

19               THE COURT: Anyone else have questions?

20               MR. GUTHALS: Your Honor, this is Joel Guthals  
21 from Billings. May I ask a couple questions?

22               THE COURT: Mr. Guthals.

23                               CROSS-EXAMINATION

24 BY MR. GUTHALS:

25 Q. Good morning, Mr. James.

1 A. Good morning, Mr. Guthals.

2 MR. GUTHALS: The three promissory notes in  
3 question, first of all, Your Honor, have they been admitted  
4 into evidence?

5 THE COURT: Exhibits 1, 2, and 3 have been  
6 admitted.

7 MR. GUTHALS: Thank you.

8 Q. (By Mr. Guthals) The three promissory notes,  
9 Mr. James, are the note obligations of Blixseth Group,  
10 Incorporated; is that right?

11 A. That is correct.

12 Q. These are corporate obligations; is that correct?

13 A. That is correct.

14 Q. Okay. And these are not personal obligations of  
15 Timothy L. Blixseth; is that correct?

16 A. Based upon the language in the note, that appears to be  
17 the case. I don't know if there's a basis to make a claim  
18 against Mr. Blixseth; otherwise, there may be.

19 Q. Do you have today any basis for any claim against  
20 Mr. Timothy Blixseth?

21 A. I would say that I have a strong gut feeling and  
22 suspicion that there is. I don't have the documents and  
23 the evidence before me to substantiate that to proceed on  
24 it at this point, but that would be an avenue of my  
25 investigation and is something that I certainly would want

1 to investigate and pursue.

2 MR. GUTHALS: Thank you.

3 THE COURT: Anyone else with questions?

4 Mr. Patten, do you have any redirect?

5 MR. PATTEN: No, Your Honor.

6 THE COURT: You may step down, Mr. James.

7 Any other witnesses as it relates to this  
8 specific application and the objections?

9 MR. PATTEN: No, Your Honor.

10 THE COURT: Anyone else have anything?

11 Okay. Let's continue on -- oh, Mr. Chehi.

12 MR. CHEHI: Your Honor, if we may, we would like  
13 to put on some witnesses and then, you know, make an  
14 argument on the order to show cause and in support of the  
15 stipulation, if we could.

16 THE COURT: Okay. I was just going to call for  
17 the stipulation now. Let's just take that on right now,  
18 the stipulation as well as it relates to the order to show  
19 cause.

20 MR. CHEHI: Very good, Your Honor.

21 THE COURT: So if you wish to call yours or  
22 Mr. Beckett.

23 Okay. Mr. Chehi or Mr. Saunders, I'm not sure  
24 which is handling this.

25 MR. SAUNDERS: I'll be handling the examinations,

1 Your Honor. We'll call Louis Pistecchia as our first  
2 witness.

3 THE COURT: Okay. If the witness could come  
4 forward, please, to be sworn.

5 LOUIS PISTECCHIA, WITNESS, SWORN

6 DIRECT EXAMINATION

7 BY MR. SAUNDERS:

8 Q. Good morning. Could you state your full name again for  
9 the record, please?

10 A. Louis Pistecchia.

11 Q. Okay. And do you have a job, sir?

12 A. Yes, sir.

13 Q. What's your job?

14 A. I'm a director at Credit Suisse.

15 Q. Okay. Are you a director with any particular  
16 responsibilities?

17 A. Yes. I'm in charge, I'm the manager in charge of the  
18 loans control group.

19 Q. Okay. And what do you do in that capacity of the loan  
20 control group?

21 A. Among other responsibilities, I'm in charge for keeping  
22 track of documentation for the bank.

23 Q. Okay.

24 MR. SAUNDERS: Your Honor, could I grab some  
25 exhibits and approach?



1 THE COURT: You certainly may.

2 Q. (By Mr. Saunders) Mr. Pistecchia, could you take a  
3 look at what's behind the tab for Exhibit 1, Credit Suisse  
4 Exhibit 1? Have you seen that document before?

5 A. Yes, I have.

6 Q. When did you first see it?

7 A. I saw this in August of 2006.

8 Q. Okay.

9 A. Oh, I'm sorry, I saw this document on -- the document  
10 was dated -- I'm sorry, I saw this document for the first  
11 time on Friday that just passed --

12 Q. Okay.

13 A. -- on January 10th.

14 Q. Okay. How did you come to see it on Friday?

15 A. At the request of our outside counsel, Skadden-Arps.

16 Q. Okay.

17 A. They requested me to review the documentation, and they  
18 sent it. They sent me a PDF of the documentation.

19 Q. Okay. Does Credit Suisse have possession of the  
20 originals of these notes?

21 A. Yes, we do.

22 Q. Okay. And where does Credit Suisse keep the originals?

23 A. These are kept in a vault in New York City.

24 Q. Okay. Is the maintenance of original loan documents  
25 like these notes at that vault something that Credit Suisse

1 does in the ordinary course of its business?

2 A. Yes, it does.

3 Q. Okay. Have you ever personally seen the originals?

4 A. Yes, I have.

5 Q. Okay. How did you come to see the originals?

6 A. I was requested to obtain the original documentation  
7 from the file and make a comparison to what is contained in  
8 the exhibits to make sure they were a match.

9 Q. Okay. And the way that you obtained the originals from  
10 the vault, is that the same process that you would use in  
11 the ordinary course of your business if you had to be able  
12 to look at the originals of something that was in the  
13 vault?

14 A. Yes, it is.

15 Q. And did you have an opportunity to compare the  
16 originals that you retrieved from the vault against the  
17 copies that Skadden-Arps had provided you that are  
18 Exhibit 1?

19 A. Yes, I did. I made a line-by-line comparison.

20 Q. A line-by-line comparison?

21 A. Yes.

22 Q. And what did that comparison show?

23 A. That the exhibits are the exact copy to the originals.

24 MR. SAUNDERS: Your Honor, at this point, I would  
25 move Credit Suisse Exhibit 1 into evidence.

1 THE COURT: Any objection?

2 Exhibit 1 is admitted.

3 CREDIT SUISSE EXHIBIT NO. 1 ADMITTED INTO EVIDENCE

4 MR. PATTEN: Your Honor?

5 THE COURT: Mr. Patten.

6 MR. PATTEN: Is Exhibit 1 the promissory note?

7 THE COURT: No, Exhibit 1 -- well, Exhibit 1 is a  
8 letter. It includes a letter dated July 26, 2006, to Dana  
9 Klein from Doyle, Garland, Nelson, which includes copies of  
10 four promissory notes.

11 MR. PATTEN: Okay.

12 THE COURT: Do you have that? Does everyone have  
13 those? Okay.

14 Q. (By Mr. Saunders) How long have those original notes  
15 been in possession of Credit Suisse?

16 A. They have been in our possession since August of 2006.

17 Q. Okay. And then has that possession been continuous?

18 A. Yes, it has been.

19 MR. SAUNDERS: Okay, no further questions.

20 THE COURT: Mr. Saunders, you did offer  
21 Exhibit 1, didn't you?

22 MR. SAUNDERS: Yes, Your Honor.

23 THE COURT: And Mr. Patten raised the question.

24 MR. SAUNDERS: Right.

25 THE COURT: Exhibit 1 is admitted.

1 MR. SAUNDERS: Thank you, Your Honor.

2 THE COURT: Any cross-examination anyone wishes  
3 to make?

4 If not, you may step down. Thank you.

5 THE WITNESS: Thank you very much.

6 THE COURT: Next witness?

7 MR. SAUNDERS: Your Honor, we'd call Edra  
8 Blixseth.

9 THE COURT: Okay. If you could come forward to  
10 be sworn, please.

11 EDRA BLIXSETH, WITNESS, SWORN

12 MR. SAUNDERS: Your Honor, would it be acceptable  
13 for Mr. Pistecchia to leave the courtroom at this point?

14 THE COURT: Without objection, he certainly may.  
15 He's excused.

16 MR. SAUNDERS: Thank you very much. Your Honor,  
17 could I also approach Ms. Blixseth with an exhibit?

18 THE COURT: You may.

19 THE WITNESS: Thanks.

20 DIRECT EXAMINATION

21 BY MR. SAUNDERS:

22 Q. Good morning again, Ms. Blixseth.

23 THE WITNESS: Your Honor, I forgot to bring my  
24 glasses again. Can I run and get them?

25 THE COURT: Just a moment.

1 MR. SAUNDERS: Sure.

2 THE WITNESS: I forgot to bring my glasses up  
3 again.

4 THE COURT: Okay. You may step down and retrieve  
5 your glasses.

6 Q. (By Mr. Saunders) Good morning.

7 A. Good morning.

8 Q. Ms. Blixseth, you are the president of an entity called  
9 the "BLX Group, Inc."; is that right?

10 A. Yes.

11 Q. Okay. And you're also the owner of the BLX Group,  
12 Inc., right?

13 A. Yes, I am.

14 Q. You're the 100 percent equity owner of BLX Group, Inc.,  
15 right?

16 A. Yes, I am.

17 Q. Okay. And your ownership of BLX Group represents a  
18 significant portion of your personal wealth, right?

19 A. That's a difficult question to answer. It represents  
20 the old BGI. It just changed from Blixseth Group, Inc., to  
21 BLX Group, Inc., which is the -- houses the Yellowstone  
22 Club.

23 Q. Okay. Would you agree with me that it's a significant  
24 portion of your assets, the assets that you control?

25 A. Not right now. I hope it to be in the future, but not

1 right now.

2 Q. Okay. Would you agree with me that it's a material  
3 portion of your assets?

4 A. It's got material potential upside for assets for me,  
5 yes.

6 Q. Fair enough. And I think you mentioned this in your  
7 answer: The BLX Group, Inc., was formally known as  
8 "Blixseth Group, Inc."; is that right?

9 A. Correct.

10 Q. Okay. Can I call Blixseth Group, Inc., now known as  
11 BLX Group, Inc., just "BGI"?

12 A. That's what we all do.

13 Q. Okay, great. And BGI is the manager and controlling  
14 member of the Yellowstone Mountain Club, LLC, and the  
15 Yellowstone Development, LLC, right?

16 A. That's correct.

17 Q. Okay. And those two entities are debtors in possession  
18 in these Chapter 11 cases, right?

19 A. That's correct.

20 Q. Okay. And in addition to controlling the manager of  
21 the debtors, you are the chief executive officer of the  
22 debtors, right?

23 A. That's correct.

24 Q. Okay. And so subject only to the approval of the  
25 Court, you are the person who ultimately directs the

1 actions of the debtors and their professionals in these  
2 cases, right?

3 A. That's correct.

4 Q. Okay. Are you generally knowledgeable about the  
5 debtors' financial situation?

6 A. I am generally knowledgeable about the debtors'  
7 situation from taking over in mid August to now and trying  
8 to get up to speed of things before.

9 Q. But part of getting -- part of that getting up to  
10 speed, you've had an opportunity to take a look at and  
11 understand some of the financial circumstances that the  
12 debtors find themselves in, right?

13 A. That's correct.

14 Q. Okay. Could you take a look at Exhibit 2 in the  
15 binder? This is a copy of a credit agreement between the  
16 debtors and various lenders with Credit Suisse as  
17 administrative agent dated September 30, 2005, correct?

18 A. Correct.

19 Q. Okay. I have put a little red flag on one of the pages  
20 for you.

21 MR. SAUNDERS: And I did the same for Your Honor  
22 because the page doesn't have a number on it. For the  
23 record, it occurs right after page 92.

24 Q. (By Mr. Saunders) That's your ex-husband's signature  
25 on three places on that page, right?

1 A. That's correct.

2 MR. SAUNDERS: Okay. Your Honor, I would move  
3 Credit Suisse Exhibit 2 into evidence.

4 THE COURT: Any objection?

5 Exhibit 2 is admitted.

6 CREDIT SUISSE EXHIBIT NO. 2 ADMITTED INTO EVIDENCE

7 BY MR. SAUNDERS:

8 Q. Ms. Blixseth, could you turn to Exhibit 3? Exhibit 3  
9 is a copy of a security agreement between the debtors and  
10 Credit Suisse dated September 30, 2005, correct?

11 A. Yes, it is.

12 Q. Okay. And could you take a look towards the end? And,  
13 I apologize, I don't think I put a flag on this, but it  
14 would be page No. 27. It's the signature line.

15 A. Yes, I have that.

16 Q. Okay. And that's your ex-husband's signature, Timothy  
17 L. Blixseth, in three places on that page, correct?

18 A. That's correct.

19 MR. SAUNDERS: Your Honor, I would move Credit  
20 Suisse Exhibit 3 into evidence.

21 THE COURT: Any objection?

22 Exhibit 3 is admitted.

23 CREDIT SUISSE EXHIBIT NO. 3 ADMITTED INTO EVIDENCE

24 BY MR. SAUNDERS:

25 Q. Could you take a look at Exhibit 4? Do you have that,



1 ma'am?

2 A. I do.

3 Q. Okay. These are the audited financial statements of  
4 the debtors as of December 31, 2007, right?

5 A. That's correct.

6 MR. SAUNDERS: Okay. Your Honor, I would move  
7 Credit Suisse Exhibit 4 into evidence.

8 THE COURT: Any objection?

9 Exhibit 4 is admitted.

10 MR. PATTEN: Your Honor, I would object for lack  
11 of foundation.

12 THE COURT: Overruled. It's admitted.

13 CREDIT SUISSE EXHIBIT NO. 4 ADMITTED INTO EVIDENCE  
14 BY MR. SAUNDERS:

15 Q. Okay. Could you turn back to Exhibit 1? That is the  
16 notes.

17 A. Hm-hmm.

18 Q. And these are the notes that are the reason for the  
19 hearing today, right?

20 A. Correct.

21 Q. Okay. BGI is the obligor on each of the first three  
22 notes, right?

23 A. Correct.

24 Q. What assets does BGI have?

25 A. Currently, BGI has the Yellowstone Club entities: YMC,

1 normally known as "YC"; YDI; Big Sky Ridge; Porcupine  
2 Creek; and -- (inaudible.)

3 Q. Okay. And Porcupine Creek is your personal primary  
4 residence, right?

5 A. Correct.

6 Q. Okay. Is BGI also the owner of a piece of land within  
7 the geographic confines of the Yellowstone Club that is  
8 known as the "family compound"?

9 A. No, it is not.

10 Q. Okay. You own that separately from BGI?

11 A. Correct.

12 Q. Okay. BGI is indebted to CrossHarbor, correct?

13 A. BGI, no, I believe that's me personally.

14 Q. Okay. And then what's the approximate amount of your  
15 personal obligation to CrossHarbor? About \$35 million?

16 A. Thirty-five million dollars.

17 Q. Okay. And I know I asked you questions about this back  
18 in December, but you're in default on that debt, correct?

19 A. I am.

20 Q. Okay. Nothing's changed with respect to that since I  
21 asked you those questions in December; is that right?

22 A. Actually, yes. They have, they have proceeded to  
23 foreclose on their default and started an action.

24 Q. CrossHarbor has started an action against you  
25 personally?

1 A. Correct.

2 Q. Okay. Where has that action been filed?

3 A. I'm sorry?

4 Q. Where has that action been filed? Has it been filed in  
5 a court somewhere?

6 A. I believe so. I was just served with it last weekend,  
7 and I actually wasn't there when I got it. My attorney got  
8 it, so I haven't actually had time to read it yet.

9 Q. Okay. Now, going back to BGI for a second, BGI is  
10 generally unable to pay its debts as they come due, right?

11 A. That is correct.

12 Q. Okay. It's got significant liquidity problems?

13 A. That is correct.

14 Q. Okay. And it's been unable to make payroll at  
15 Porcupine Creek; is that right?

16 A. That is correct.

17 Q. Okay. Is BGI considering bankruptcy?

18 A. BGI hasn't pursued considering bankruptcy. We're  
19 trying to resolve the liquidity issue.

20 Q. I'm sorry, it hasn't filed a bankruptcy petition, but  
21 it's considering it? Is that --

22 A. No. What we're working on now is trying to resolve the  
23 liquidity issue.

24 Q. Is Porcupine Creek pledged to CrossHarbor as  
25 collateral?

1 A. Yes, it is.

2 Q. Okay. Are you personally considering bankruptcy?

3 A. Right now, I'm personally considering for BGI, for  
4 myself, for everything else involved trying to find a way  
5 to take care of the liquidity issue.

6 Q. And is bankruptcy an option that you're considering?

7 A. Not at this time.

8 Q. Okay. The three notes from BGI to the debtors, they're  
9 all demand notes, right?

10 A. That's correct.

11 Q. But prior to January 6, 2007, the debtors made no  
12 demand for repayment of the notes, right?

13 A. Not to the best of my knowledge. But at that time, I  
14 was not in control of BGI.

15 Q. I'm sorry, I misspoke. Prior to January 6th of 2009 --

16 A. Okay.

17 Q. -- the debtors made no demand for repayment of those  
18 notes, right?

19 A. That's correct.

20 Q. Okay. And then Mr. James testified about a letter that  
21 he had sent demanding repayment on January 6th?

22 A. That's correct.

23 Q. And have you received that letter?

24 A. I have.

25 Q. Okay. Did you repay the notes?

1 A. No.

2 Q. Okay. Do you intend to repay the notes?

3 A. We intend to work with Tim to try to figure out if  
4 there's a way to find a way to repay the notes or find out  
5 where -- we intend to cooperate. We can't repay the notes  
6 now. There's, there's, there's not equity or liquidity to  
7 repay the notes.

8 Q. And prior to Mr. James making that demand on January  
9 6th of this year, you've never directed anyone else of the  
10 debtors to make a demand on the notes, right?

11 A. No. We've discussed with -- I discussed with Andy  
12 Patten, our lawyer --

13 MR. PATTEN: Objection.

14 THE WITNESS: Okay, sorry, I forgot. Thanks,  
15 Andy.

16 THE COURT: What's your objection?

17 MR. PATTEN: Attorney-client communication.

18 THE COURT: Okay, I'll sustain that.

19 Q. (By Mr. Saunders) Okay. My question, though, was:  
20 Putting aside conversations you may or may not have had  
21 with Mr. Patten, you never directed anybody to make the  
22 demand?

23 A. No, I did not.

24 Q. Okay. Would you agree with me that enforcement of the  
25 notes by the debtors against BGI would have a negative

1 effect on BGI's financial condition?

2 A. Could you repeat your question?

3 Q. Sure. Would you agree with me that enforcement by the  
4 debtors of these notes against BGI will have a negative  
5 effect on BGI's financial condition?

6 A. Well, I think the fact that BGI has the notes payable  
7 probably already has a negative effect on BGI, so having  
8 them enforced would just be the normal process of, of when  
9 you have a note.

10 Q. Okay. Well, BGI has liquidity problems at the moment,  
11 right?

12 A. It definitely has liquidity problems.

13 Q. Okay. And if the debtors were to enforce the notes, it  
14 might cause you to have to sell real property, for  
15 instance, like Porcupine Creek on an expedited basis,  
16 right?

17 A. That would create, that would create a real problem of,  
18 of maximizing the value of an asset.

19 Q. Okay. So it's possible that the enforcement --  
20 depending on how the enforcement proceeds, it's possible  
21 that the enforcement of these notes by the debtors against  
22 BGI will make BGI's situation even worse, right?

23 A. That would be correct.

24 Q. Okay. And because you own BGI, if that happens, that  
25 makes your situation worse, right?

1 A. That would be correct.

2 Q. Okay. You were the person who -- I'll withdraw that  
3 question.

4 You're generally familiar, are you not, with the terms  
5 of CrossHarbor DIP financing term sheet as approved by the  
6 Court?

7 A. Yes.

8 Q. Okay. And you're aware that there's a February 13,  
9 2009, deadline for the debtors to file a reorganization  
10 plan acceptable to CrossHarbor, right?

11 A. Yes, I am.

12 Q. Okay. Have the debtors proposed reorganization plan  
13 terms to Credit Suisse as agent for the perpetuation  
14 lenders?

15 A. Have we proposed a plan? I'm sorry, could you repeat  
16 the last part?

17 Q. Have you proposed any reorganization, any plan of  
18 reorganization terms or term sheet to Credit Suisse yet?

19 A. We have not proposed it to them yet.

20 Q. Okay. Have you proposed any plan of reorganization  
21 terms or term sheet to the official committee of unsecured  
22 creditors?

23 A. We have not proposed any term sheets yet.

24 Q. Okay. Have the debtors proposed any plan of  
25 reorganization terms or term sheet to any of their

1 creditors?

2 A. We have not proposed any term sheets yet.

3 Q. Okay.

4 MR. SAUNDERS: Your Honor, could I just have a  
5 minute?

6 THE COURT: Yes.

7 MR. SAUNDERS: May I proceed again, Your Honor?

8 THE COURT: You may proceed.

9 Q. (By Mr. Saunders) I'm sorry, Ms. Blixseth, I just want  
10 to make sure that I understand the status of Porcupine  
11 Creek as it relates to BGI and CrossHarbor. I think you  
12 told me that Porcupine Creek is owned by BGI; is that  
13 right?

14 A. That's correct.

15 Q. And yet Porcupine Creek is -- and you also told me that  
16 the loan from CrossHarbor, the \$35 million loan, is to you  
17 personally and not to BGI; is that right?

18 A. That's correct; to the best of my recall, that's  
19 correct.

20 Q. Okay. And yet that loan is secured by a lien on  
21 Porcupine Creek?

22 A. Correct.

23 Q. Okay. Is it secured by a lien on BGI as a whole?

24 A. No, it's not.

25 Q. Okay. But as the managing member of BGI, you gave



1 CrossHarbor a lien on one of BGI's assets, Porcupine Creek,  
2 to secure a loan that went to you personally; is that  
3 right?

4 A. Yeah. I may be misstating that. I'm trying to recall.  
5 If I had it in front of me, I could probably answer more  
6 accurately, too. But that's my recall of it.

7 MR. SAUNDERS: Okay. Nothing further, Your  
8 Honor.

9 THE COURT: Mr. Beckett, do you have questions?

10 MR. BECKETT: No, thank you, Your Honor.

11 THE COURT: Mr. Patten?

12 MR. PATTEN: No, Your Honor.

13 UNIDENTIFIED SPEAKER: Nothing, Your Honor.

14 THE COURT: No one else?

15 I guess if you could clarify --

16 THE WITNESS: Okay.

17 THE COURT: So you also have property at Palm  
18 Desert?

19 THE WITNESS: Correct. It's Rancho Mirage, but  
20 that's Porcupine Creek.

21 THE COURT: Okay, Rancho Mirage. And that's  
22 owned by BGI or by someone else?

23 THE WITNESS: By BGI.

24 THE COURT: Okay. And that's also collateral to  
25 the \$35 million loan with CrossHarbor?

1 THE WITNESS: That is the collateral, yes.

2 THE COURT: Okay. So Porcupine Creek as well as  
3 Rancho Mirage?

4 THE WITNESS: It's the same thing.

5 THE COURT: Oh, it's the same thing.

6 THE WITNESS: Yeah.

7 THE COURT: Okay, very good. I appreciate that  
8 clarification. I thought Porcupine Creek was at Big Sky.

9 THE WITNESS: No, Porcupine Creek is in Rancho  
10 Mirage. It sounds like it because there's Porcupine Creek  
11 and Big Sky.

12 THE COURT: Thank you.

13 THE WITNESS: Okay.

14 THE COURT: I appreciate the clarification. You  
15 may step down.

16 THE WITNESS: Thank you.

17 MR. SAUNDERS: Your Honor, we had put  
18 Mr. Greenspan on our list of witnesses, but I understand  
19 from - oh, thank you very much - I understand from  
20 Mr. Patten that he's not available. So with the Court's  
21 indulgence, I'm not sure what the local practice is, but I  
22 would like to read into the record two very brief excerpts  
23 from Mr. Greenspan's testimony in December just to make  
24 sure that they're in the record for this hearing.

25 Now, if anything that's been previously testified

1 to at a prior hearing is already on the record for this  
2 hearing, then I don't need to do that, but if Your Honor  
3 would like it to be on the record --

4 THE COURT: Well, without objection, I would ask  
5 that the excerpts be noted and stated so that we know  
6 what's in the transcript that you're referring to rather  
7 than the entire transcript. Okay?

8 MR. SAUNDERS: Okay. The two excerpts, then, are  
9 from Volume I, which was December 11, 2008; page 100 -  
10 line 16 through page 101 - line 1.

11 THE COURT: Okay.

12 MR. PATTEN: Excuse me, could you state that  
13 again, Mr. Saunders?

14 MR. SAUNDERS: Sure. Page 100 - line 16 through  
15 the next page, page 101 - line 1.

16 THE COURT: Okay. Let's just read that into the  
17 record, whatever they are.

18 MR. SAUNDERS: They're quite short, Your Honor.  
19 So page 100 - line 16.

20 "QUESTION: You're the debtors' chief  
21 restructuring officer; is that right?

22 "ANSWER: I am.

23 "QUESTION: And in that capacity, you report to  
24 Ms. Edra Blixseth, correct?

25 "ANSWER: Either to Ms. Blixseth or to the board.

1 "QUESTION: And subject to the Court's approval,  
2 it's Ms. Blixseth as the chief executive officer who  
3 ultimately decides what strategies the debtors pursue and  
4 who positions they take, right?

5 "ANSWER: I think that's correct."

6 Your Honor, the other excerpt is in Volume II,  
7 which is the testimony from December 12th -- or the  
8 proceedings from December 12, 2008. And my excerpt is the  
9 entirety of page 165, so that's lines 1 through 25. Would  
10 you like me to read them, as well, Your Honor?

11 THE COURT: I would.

12 MR. SAUNDERS: Okay.

13 "QUESTION: So you think BGI doesn't have the  
14 ability to make interest payments?

15 "ANSWER: That's my understanding.

16 "QUESTION: Okay. Would that, you know, possibly  
17 play into the value of the notes at all?

18 "ANSWER: Yes.

19 "QUESTION: Okay. Have you asked the Blixseth  
20 Group, Inc., to pay interest on the notes?

21 "ANSWER: I haven't made a formal demand.

22 "QUESTION: Why not?

23 "ANSWER: Because when I've asked about it, I've  
24 been told there's no capacity. And what we're looking for  
25 right now is immediate funding, and I don't believe there's

1 any way to get income on that right now other than commence  
2 an action, which is not going to get money into the estate  
3 in the time we need it.

4 "QUESTION: And who did you ask?

5 "ANSWER: Ms. Blixseth.

6 "QUESTION: Did you ask Ms. Blixseth whether the  
7 Blixseth Group, Inc., would repay any of the principal that  
8 they owe on these notes?

9 "ANSWER: Again, when I've inquired whether there  
10 were resources to make cash payments, which is what we need  
11 now, I was told there's not cash to make payments. I  
12 didn't specify between interest and principal."

13 Thank you, Your Honor, no further witnesses.

14 THE COURT: Mr. Chehi?

15 MR. CHEHI: Good afternoon, Your Honor. I'm  
16 going to make some points based upon the record today that  
17 will show that and establish on the record that Credit  
18 Suisse has a perfected security interest in the notes; and,  
19 secondly, that there is factual circumstances to justify  
20 and, in fact, require stay relief under Section 362(d)(1)  
21 of the code and also under 362(d)(2) of the code.

22 As far as the perfection issue goes, as the  
23 evidence and testimony today shows, Credit Suisse's agent  
24 and collateral agent for the prepetition lenders under the  
25 credit agreement dated September 30, 2005, has a valid

1 perfected security interest in the three notes that are the  
2 subject of the order to show cause. As set forth on the  
3 debtors' schedules and statements and in prior testimony in  
4 these cases, the debtors are indebted to Credit Suisse and  
5 the lenders that it acts as agent for in an amount of not  
6 less than \$307 million.

7           The related security agreement also dated as of  
8 September 30, 2005, which was admitted today as an exhibit,  
9 grants Credit Suisse a security interest in the notes.  
10 Section 27 of the security agreement provides that it is  
11 governed by New York law. Accordingly, New York's Uniform  
12 Commercial Code, the "UCC", as I'll refer to it, applies to  
13 the security agreement and the issues of perfection of  
14 Credit Suisse's liens and the various pieces of collateral  
15 that are subject to the security agreement and the credit  
16 agreement.

17           Section 1 of the security agreement grants Credit  
18 Suisse's security interest in all personal properties of  
19 Yellowstone Mountain Club and Yellowstone Development,  
20 including instruments and all proceeds thereof, which are  
21 all defined as collateral in the security agreement.

22           Section 2 of the security agreement provides that  
23 it secures and the collateral is collateral security for  
24 payment of all obligations of the debtors under the credit  
25 agreement. And, again, this is the contractual language of

1 the security agreement.

2 Now, under Section 9-102(a) of New York's Uniform  
3 Commercial Code, instruments are defined. And they mean a  
4 negotiable instrument or any other writing that evidences a  
5 right to payment of a monetary obligation. Accordingly,  
6 each of the notes that are in evidence and are the subject  
7 of the hearing today are an instrument within the meaning  
8 of the New York UCC and Section 1 of the security  
9 agreement. And, further, any proceeds of the notes are  
10 therefore collateral under the security agreement and  
11 subject to Credit Suisse's security interests granted under  
12 Section 1 of the security agreement.

13 In sum, the terms of the credit agreement, the  
14 security agreement, and applicable New York Uniform  
15 Commercial Code law create a security interest in the BGI  
16 notes in favor of Credit Suisse as collateral agent for the  
17 prepetition lenders to secure all amounts owed to them  
18 under the credit agreement.

19 Now, as for perfection of those security  
20 interests, Credit Suisse, as collateral agent, has a  
21 perfected security interest in the notes because, one, on  
22 September 30, 2005, Credit Suisse filed with the Montana  
23 Secretary of State various UCC financing statements  
24 covering all assets of the debtors, including the notes;  
25 and, additionally - and that's the subject of the testimony

1 today - Credit Suisse perfected its security interest by  
2 taking possession of the notes and continuously retaining  
3 possession of them in the state of New York and New York  
4 City.

5 Credit Suisse's witness today testified to the  
6 facts that Credit Suisse is taking possession of the notes  
7 not later than August 2006; and pursuant to delivery by a  
8 letter dated July 26, 2006, Credit Suisse has had  
9 continuing possession of the notes since that time.

10 Section 9-313(a) of the New York Uniform  
11 Commercial Code states, quote (quoted as read): "A secured  
12 party may perfect security interest in instruments by taking  
13 possession of the collateral," end quote.

14 That provision of the New York UCC governs Credit  
15 Suisse's perfection by possession because the notes have  
16 been located in New York, and Section 9-301(b) of the New  
17 York Uniform Commercial Code provides that local -- the  
18 local law of the jurisdiction in which the collateral is  
19 located governs perfection. And that's why the New York  
20 UCC governs the perfection by possession of Credit Suisse's  
21 interest in those notes, because that's where the notes  
22 have been located since Credit Suisse took possession of  
23 them.

24 Given the applicable New York UCC law and the  
25 testimony today of Mr. Pistecchia of Credit Suisse



1 concerning Credit Suisse's possession of the notes in New  
2 York, Credit Suisse has shown that it has perfected  
3 security interests in the notes. And we would ask the  
4 Court to, you know, so find in consideration of this  
5 hearing.

6 Now, as set forth in our submission in respect to  
7 the order to show cause, Your Honor, we indicated that  
8 Credit Suisse is entitled to - and the statutes are  
9 mandatory - to receive modifications of the stay for a  
10 number of reasons, and the first being: Under  
11 Section 362(d)(1) of the bankruptcy code, the Court shall  
12 and must grant stay relief for cause shown, including the  
13 lack of adequate protection of the prepetition lender's  
14 interests in the notes.

15 The lender's interests in the notes are not  
16 adequately protected for two reasons. First, the final  
17 order authorizing CrossHarbor DIP financing does not  
18 adequately protect the lenders against an event of default  
19 under the DIP financing. Such an event of default, which  
20 may occur within just a few weeks if the debtors do not  
21 file a plan of reorganization acceptable to CrossHarbor by  
22 February 13th, as Ms. Blixseth testified, will permit  
23 CrossHarbor to declare an event of default, discontinue  
24 funding of these cases, seize the debtors' cash collateral  
25 and other property, including the notes. And this will

1 cause the loss of going-concern value which the Court has  
2 considered an important element of lender adequate  
3 protection in these cases. And the provisions of the final  
4 order that apply to CrossHarbor's rights to seize the notes  
5 and all of the other properties of the debtors in  
6 satisfaction of their debtor-in-possession financing claims  
7 in the event of default are Paragraphs 5(b), 6, 9, and  
8 12(e).

9           And in those circumstances, Your Honor, we  
10 believe that, given the short period of time between now  
11 and February 13th and Ms. Blixseth's admitted -- the  
12 debtors' admitted failure to provide term sheets or plans  
13 of reorganization to the official committee or to the  
14 Credit Suisse's agent - and those are their major creditor  
15 constituents in these cases, Your Honor - that there is at  
16 least a significant likelihood, if not a great probability,  
17 that over the course of the next three to four weeks before  
18 February 13, the debtors are going to be unable to satisfy  
19 the February 13 requirement of the CrossHarbor financing.  
20 And that in and of itself creates cause in these  
21 circumstances to lift the automatic stay with respect to  
22 the notes because they're going to be subject to seizure by  
23 CrossHarbor in the event of -- an event of default.

24           Second, there is cause to lift the stay because,  
25 as shown by Ms. Blixseth's testimony today and

1 Mr. Greenspan's testimony on December 11th or 12th that  
2 Mr. Saunders read into the record, BGI's financial  
3 difficulties and inability to pay on the notes have a  
4 negative impact on the notes and their speculative value.  
5 The notes are losing value as BGI's financial condition  
6 deteriorates.

7           Among other things, Ms. Blixseth has admitted  
8 that BGI owes CrossHarbor personally \$35 million that BGI  
9 cannot pay, that she cannot pay, and that's secured by  
10 BGI's property, Porcupine Creek, which is a significant  
11 asset of BGI. And she admitted, as well, that CrossHarbor  
12 is seeking repayment of such amounts as, indeed, I guess,  
13 commence some sort of action against her, which means that  
14 they're going to be able to take an action on their liens  
15 against the BGI property known as Porcupine Creek.

16           In these circumstances, the value of the notes to  
17 the lenders is declining, is at risk, and is not adequately  
18 protected by the final order. Such declining value and  
19 risk of loss of the notes - (inaudible) - CrossHarbor  
20 constitutes a lack of adequate protection, and that  
21 constitutes ample cause under Section 362(d)(1) of the  
22 statute to justify and, in fact, require modifying the stay  
23 to allow Credit Suisse, as collateral agent, to pursue  
24 enforcement of the notes. And we think it equally  
25 justifies perhaps even the lesser remedy, if you want to

1 call it that, of the stipulated joint enforcement of the  
2 notes by the committee and Credit Suisse as set forth in  
3 the stipulation.

4           Moving on to Section 362(d)(2) of the code, which  
5 also requires mandatory stay relief in certain  
6 circumstances, it's required here because the debtors have  
7 no equity in the notes and they are not necessary to an  
8 effective reorganization of these debtors. The debtors  
9 lack equity in the notes because the aggregate senior  
10 lender claim in the amount of at least \$307 million exceeds  
11 the outstanding aggregate \$225 million amount of the notes  
12 that's recorded on the debtors' financial statements as of  
13 December 31, 2007, by at least \$80 million. So the debtors  
14 are under water on those notes in respect of the  
15 prepetition lender's claims by \$80 million. And even if  
16 the notes were worth - which I can't believe they are - but  
17 even if they were assumed to be worth their full face  
18 principal amounts as written, that would be an aggregate of  
19 \$272 million. And, again, that amount falls short of the  
20 amount that's owed to the prepetition lenders. They have  
21 secured perfected liens in those notes; and, therefore, the  
22 debtors lack equity in them.

23           And as a third basis for finding that the debtors  
24 lack equity in the notes, that's because their value is  
25 declining due to the financial decline in BGI and

1 Ms. Blixseth and the risk that CrossHarbor may seize those  
2 notes upon an event of default in the near future. And  
3 that decline in value of the notes caused by those  
4 circumstances is a further factual circumstance, and a  
5 strong one, that the notes are declining in value. And to  
6 that extent, the debtors have much less negative equity  
7 than they otherwise would have.

8           The second prong of Section 362, which is  
9 362(d)(2)(b), requires a showing that the notes are not  
10 necessary to the reorganization. That prong is satisfied  
11 because the debtors' own actions show the notes are not  
12 essential to their reorganization. There's no plan that is  
13 in prospect and there has been no meaningful debtor  
14 progress towards a plan. Indeed, the likelihood of a plan  
15 is remote, given that the February 13th deadline is fast  
16 approaching, and the debtors have not yet drafted or  
17 proposed or discussed with any of their major constituents,  
18 our clients, and the official committee anything about a  
19 plan. They have not proposed a term sheet. And at this  
20 late date in the game, one cannot expect reasonably that in  
21 cases of this complexity and with the significant issues at  
22 stake that the debtors are going to be able to cobble  
23 together and file a plan that is -- a fair plan that is  
24 acceptable to CrossHarbor and also acceptable to the  
25 unsecured creditors and Credit Suisse. Because they

1 haven't even asked -- no particular plan terms have been  
2 proposed. And in my experience, it takes many weeks, if  
3 not months, to come to a conclusion on an appropriate plan,  
4 if one is going to file one.

5           Additionally, if the notes were essential to the  
6 debtors' reorganization, the debtors would have made a  
7 demand on them at the beginning of the cases. They would  
8 have proceeded with litigation long before January 6th.  
9 It's a little too late and a little too little. The fact  
10 that the debtors have made a demand through their new  
11 counsel against BGI for payment of the notes came just two  
12 days before they filed their brief in response to your  
13 order to show cause, Your Honor, and I don't think that  
14 that is a coincidence. They have very few facts to support  
15 their position on the order to show cause, they have very  
16 few facts that could possibly support why the stay should  
17 not be lifted, so they had to go out and actually make the  
18 demand so they could say, "We're in charge. We're doing  
19 it, we're doing our job."

20           I want to now talk about why Credit Suisse and  
21 the committee should be authorized to jointly enforce and  
22 seek payment on the notes pursuant to the stipulation. We  
23 have many reasons for that.

24           First, the debtor has inherent and inescapable  
25 conflicts. The evidence today, prior testimony in the case

1 by Mr. Greenspan, and the entire record of these chapter 11  
2 cases shows that the debtors cannot be suitable plaintiffs  
3 against BGI because Ms. Blixseth is the person in control  
4 of the debtors. There's no independent board, there's no  
5 independent directors; it's just Ms. Blixseth running the  
6 debtors. And, similarly, she's the only person in charge  
7 of BGI. And BGI, as a matter of contract and the debtors'  
8 own organizational documents, is the manager of the  
9 debtors. It's hard to believe under those circumstances,  
10 notwithstanding the statements of the debtors' new special  
11 counsel to pursue the notes, that there could be any real  
12 meaningful third-party litigation dealings between the  
13 debtors and BGI on those notes because Ms. Blixseth is on  
14 both sides of the equation. It's almost incomprehensible.

15 She admitted that she's going to work with the  
16 debtors and work with BGI to come up with some sort of  
17 satisfactory solution which isn't going to involve a  
18 payment on the notes because she's trying to maximize the  
19 value of BGI and Porcupine Creek for her personal benefit.  
20 That's, that's the bottom line here. There's just an  
21 unbelievable conflict of interest because she controls and  
22 ultimately directs the debtors' attorneys and the other  
23 professionals. There's no one else in this case that does  
24 that.

25 For instance, what if BGI proposed a settlement

1 to the debtors? Who at the debtors would be making the  
2 decision about whether that proposed settlement term was  
3 appropriate or not? It would be Ms. Blixseth, unless the  
4 attorneys independently are going to be calling the shots,  
5 but I don't think attorneys can do that, not in Chapter 11.

6           These conflicts are exacerbated by Ms. Blixseth's  
7 admitted financial difficulties, her illiquidity, and the  
8 illiquidity of BGI. She cannot be expected - and you  
9 wouldn't want to put her in that position, frankly - to be  
10 making decisions for the debtors that maximize the value on  
11 the notes because she has a personal conflict and a very  
12 clear economic one which Mr. Saunders elicited from her is  
13 at least material.

14           Second, the debtors' professionals should focus  
15 on the reorganization plan or the sale process, all of  
16 which has to come to a head by February 13th, instead of  
17 focusing on collecting the notes. These debtors have  
18 limited time, they have limited financial resources, and  
19 they have limited professional resources. They've made  
20 little, if any, progress towards a plan of reorganization.  
21 The February 13th deadline is rapidly approaching, and the  
22 debtors should be focusing strictly and primarily on  
23 facilitating a fair reorganization process, not a phony  
24 reorganization process that's going to have them spring a  
25 plan of reorganization on their major creditor



1     constituencies by February 13th so that they can please  
2     CrossHarbor and keep their financing in place.

3             We have inquired of debtors' counsel on numerous  
4     occasions over the past weeks and the business people have  
5     inquired of Mr. Greenspan, "So where's the data room that  
6     was promised by the debtors, a room collecting information  
7     about the debtors' businesses so that third-party  
8     prospective purchasers or investors in this business,  
9     pursuant to a reorganization plan or a sale, could start to  
10    do due diligence to see what's available for sale?" That  
11    data room has not been open to anyone. It has not been  
12    open to Credit Suisse.

13            The debtors have not yet hired a broker. They've  
14    talked about it, but apparently there's some resistance  
15    from certain parties in interest to hiring a broker, a real  
16    professional who's going to go out and identify prospective  
17    plan investors or prospective purchasers. No progress has  
18    been made, no application to employ such a broker or a  
19    financial advisor has been put before the Court, and we're  
20    probably today just about a month or less than a month away  
21    from the February 13th deadline.

22            Third, Credit Suisse has every right and  
23    incentive to maximize the value of the notes  
24    notwithstanding some concerns expressed and some of the  
25    objections that were filed. You know, there were

1 statements made that, you know, Credit Suisse shouldn't  
2 have anything to do with the collection on these notes if  
3 not incentivize, to maximize value; they might take  
4 something too little for the notes, etc. I can assure Your  
5 Honor that the lenders that are represented by Credit  
6 Suisse as their agent have the greatest incentive in the  
7 world to maximize their recovery, the recovery on these  
8 notes because they're owed over \$300 million.

9           The debtors can't come up with financing to fund  
10 the cases over the next few weeks and months. That was the  
11 testimony in December, "Why are we not paying attention to  
12 the notes? We have to get DIP financing in place." Well,  
13 if they can't do that without getting DIP financing from a  
14 third source, they're not going to be able to pay the  
15 lenders or pay any of their unsecured creditors, either.  
16 They're very illiquid.

17           Fourth, the proposed stipulation is the right  
18 solution, and the Court should authorize the official  
19 committee and Credit Suisse to jointly enforce and seek  
20 payment on the notes. The stipulation should be approved  
21 because it properly addresses the debtors' inherent  
22 conflict issues.

23           Second, it does not dictate the ultimate  
24 disposition of any proceeds of the notes but rather leaves  
25 that to first order of the Court or a plan of

1 reorganization. So this stipulation, in resolution of this  
2 order to show cause and resolution of Credit Suisse's  
3 rights to adequate protection and to stay relief, doesn't  
4 give Credit Suisse the notes and say they can do with them  
5 what they want and keep the proceeds. The stipulation  
6 provides that there will be a joint enforcement of the  
7 notes with the committee taking the lead as the named  
8 plaintiff on behalf of the estate, subject to Credit  
9 Suisse's consent and involvement in all of the particulars,  
10 so that we can feel assured that we -- our collateral is  
11 being handled and disposed of properly and liquidated  
12 properly. But that doesn't mean that we get to collect or  
13 keep any of the money. The stipulation provides that  
14 the -- that any of the proceeds are going to be segregated  
15 subject to our liens and not used by the debtors.

16 Now, the interests of other parties and the  
17 estate are protected under the stipulation because the  
18 official committee with its fiduciary duties will be able  
19 to proceed on the notes without delay. If we were to have  
20 the stay absolutely lifted with respect to the notes,  
21 Credit Suisse and the lenders would have to pursue a  
22 foreclosure on the notes, go through the UCC process. If  
23 you get tied up with that, there would be an inordinate  
24 delay before action can really be taken to pursue a  
25 recovery on the notes or whatever that leads to by taking

1 action, making the demand against BGI. The official  
2 committee can do that with Your Honor's order today without  
3 any delay.

4 Second, the official committee has a duty to  
5 maximize value for unsecured creditors. And that addresses  
6 the concerns of any of the objecting parties that somehow  
7 this joint-enforcement arrangement is going to prejudice  
8 creditors of the estate or residual equity owners on the  
9 grounds that Credit Suisse doesn't have the incentive to  
10 maximize a recovery for anyone but itself. Here you have  
11 the unsecured creditors, the official committee,  
12 participating actively, taking the lead. And they know  
13 that they have to shoot to make their constituents whole.  
14 If the unsecureds are going to get paid in whole, we're  
15 going to be taken care of. And that should also address  
16 the concerns of the equity because there's going to be a  
17 real fiduciary with duties to their -- the class of  
18 creditors they represent, but nevertheless it's the  
19 unsecured creditors pushing for a recovery that satisfies  
20 someone other than just the secured creditors.

21 Also, the stipulation provides specifically that  
22 any settlement of the notes requires Court approval under  
23 Rule 9019. So there's not going to be any shortsighted,  
24 inappropriate, unfair, or unreasonable resolution of these  
25 notes and the collections -- and collection or settlement

1 of them. It's going to come back before Your Honor, and at  
2 that time everybody in the courtroom, every party in  
3 interest in the case is going to have the opportunity to  
4 object to such a 9019 settlement.

5 And, also, importantly enough - agreeable, never  
6 disputed by Credit Suisse - the stipulation is expressly  
7 without prejudice to the committee's rights to challenge  
8 the lender's liens and claims. The fact that we are --  
9 we've put on the record here today, Your Honor, about our  
10 situation - we have liens and they're perfected and, etc. -  
11 that's without prejudice to the committee's rights to  
12 somehow try to avoid those liens later or challenge our  
13 claims under whatever theories they have. And they've  
14 mentioned some of them in their papers. We clearly  
15 disagree that our claims and liens are avoidable or subject  
16 to attack on some other ground, but that's tomorrow's  
17 problem. And that's actually a garden variety issue in  
18 cases like this when unsecured creditors are under water  
19 and there's a real question about whether the secured  
20 creditors are going to get paid. The only way the  
21 unsecured creditors get a recovery is if they put pressure  
22 on the secured creditors to make some sort of concessions  
23 through a plan. And we would all look forward to having a  
24 consensual plan at the end of the day, but it's not going  
25 to happen by February 13th, especially with the debtors not

1 having proposed any plan terms to any of us.

2 And, finally, as for Credit Suisse's consent  
3 rights under the stipulation, Paragraph 9 of the  
4 stipulation makes it clear that if the arrangement is not  
5 successful, if Credit Suisse and the committee cannot agree  
6 on a joint -- taking joint action at any point down the  
7 road, then either party may seek modification or  
8 termination or vacation of the stipulation by Court order.  
9 In other words, Credit Suisse's consent rights under the  
10 stipulation are not an unworkable veto power over what the  
11 committee can do. If we become unreasonable and we're not  
12 giving consent to things that the committee thinks should  
13 be done, the committee's going to come back to court and  
14 make a motion to say, "Credit Suisse's consent is no longer  
15 required."

16 And, likewise, if the committee is pursuing  
17 actions without our consent and we feel that that's  
18 inappropriate, given all the circumstances and why this  
19 order is being entered in these circumstances, we'll come  
20 back to court and we'll complain bitterly. But that will  
21 be subject to everybody in the courtroom weighing in on it  
22 just as they have here.

23 I think that's enough for now, Your Honor. I'm  
24 going to reserve my rights to respond to any other  
25 statements that might be made by other parties in interest,

1 but Credit Suisse respectfully request that the Court enter  
2 an order approving and authorizing the stipulation as being  
3 in the best interest of all the parties in the case, in the  
4 best interest of the estate, and in the best interest of  
5 Credit Suisse and the prepetition lenders who have a  
6 perfected security interest and vested property rights in  
7 the notes.

8 THE COURT: Thank you. Mr. Patten -- you know, I  
9 guess one question that I have before we go to  
10 Mr. Patten -- Mr. Chehi, you can be seated.

11 Mr. Beckett, you wanted to probably speak in  
12 favor of the stipulation, I'm assuming.

13 MR. BECKETT: Your Honor, I apologize. I lost  
14 track a little bit of whether we were doing openings in  
15 evidence and then closings.

16 THE COURT: Typically, we don't need to. I think  
17 Mr. Chehi was going through and identifying facts in  
18 support of the stipulation and for lifting the -- or  
19 modifying the stay that have already been presented.

20 But I guess before we get to that, are there any  
21 parties here who still have evidentiary issues or have  
22 witnesses that they wish to put on the record at this point  
23 in time? Or is all of the testimony in and all of the  
24 exhibits in?

25 MR. BECKETT: Your Honor, there are a couple of

1 issues -- excuse me, a couple of documents that do not  
2 require witnesses. I can get those before the Court at  
3 your convenience.

4 THE COURT: Well, let's do it right now.

5 MR. BECKETT: Thank you. And, also -- thank you,  
6 Your Honor. May it please the Court, Tom Beckett for the  
7 unsecured creditors committee.

8 A little bit of evidence, and then, Your Honor, I  
9 do have a comment to make. And I will take that at the  
10 Court's convenience.

11 The first piece of evidence I would like to hand  
12 up, Your Honor, is a little bit cumulative, but I think not  
13 fatally so. Ms. Blixseth has testified that she is the  
14 control person of BGI. And to comfort the Court with that,  
15 though it may not be necessary, but I have prepared  
16 certified copies of documents from the state of Oregon that  
17 stand for the same proposition. By the time I packed them  
18 up to bring them up yesterday, I had not yet received the  
19 final page, and so with the Court's permission, if I may  
20 hand forward Committee's Exhibits 1 and 1(a), which are  
21 documents from the state of Oregon certifying that  
22 Ms. Blixseth is president of BGI.

23 THE COURT: Okay. Is there any objection to the  
24 exhibits?

25 MR. PATTEN: I haven't seen them, Your Honor.



1           Your Honor, I have no objection to Exhibits 1 and  
2 1(a). They stand for what they stand for.

3           THE COURT: Okay. Exhibits 1 and 1(a) of the  
4 official unsecured creditors committee are admitted.

5           UNSECURED CREDITORS COMMITTEE EXHIBITS 1 and 1(a)

6                    ADMITTED INTO EVIDENCE

7           MR. BECKETT: May I approach?

8           THE COURT: You may approach. Thank you.

9           MR. BECKETT: And, secondly, Your Honor, there  
10 was testimony regarding the witness's familiarity with a  
11 lawsuit captioned Greg LeMond, et al., vs. Blixseth Group,  
12 et al., filed in Montana State Court. I do have certified  
13 copies of the complaint and answer.

14           THE COURT: For what purpose would these be  
15 offered?

16           MR. BECKETT: Your Honor, there are allegations  
17 in the complaint and answers which substantiate the  
18 allegation specifically at pages 43 -- excuse me, 33  
19 through 46, which include allegations as to where the money  
20 went after it got to BGI and admissions as to that by BGI,  
21 by Mr. Blixseth, and by the debtors.

22           THE COURT: Okay. And in summary, what is that?  
23 What do they say?

24           MR. BECKETT: \$200 million, Your Honor - and it's  
25 much more detailed than this - \$200 million that went as

1 follows, in rough numbers: BGI, \$37 million; Mr. Blixseth,  
2 \$49 million; the married couple of Timothy and Edra  
3 Blixseth, \$122 million; and \$560,000 to Edra Blixseth.

4 The purpose is not to substantiate for today's  
5 hearing where the money went, but rather so Your Honor  
6 understands the dimensions, the depth of the issue of the  
7 question: Where did the money go after it left BGI?

8 THE COURT: Is there any admissions as to  
9 acquisition of assets for which this money was used that  
10 may or may not be recoverable in some way?

11 MR. BECKETT: There are certainly admissions  
12 there that the committee has used and will continue to use  
13 as a basis of its investigation of these issues going  
14 forward. There's nothing in those complaints otherwise  
15 that I would intend to use as evidence today.

16 THE COURT: Okay. Any objection to the admission  
17 of these?

18 MR. PATTEN: No objection.

19 THE COURT: Are they marked?

20 MR. BECKETT: Yes, Your Honor.

21 THE COURT: Okay. As what?

22 MR. COSSITT: They're in Docket No. 237, Your  
23 Honor. It's Document No. 5 and 6 on Docket No. 237.

24 THE COURT: So it's Exhibits 5 and 6?

25 MR. COSSITT: Yes, sir.

1 MR. BECKETT: UCC 5 is the complaint, UCC 6 is  
2 the answer.

3 THE COURT: Okay. They are admitted.

4 MR. BECKETT: Thank you, sir.

5 UNSECURED CREDITORS COMMITTEE EXHIBITS 5 and 6

6 ADMITTED INTO EVIDENCE

7 MR. BECKETT: I can make a comment about the  
8 committee's position with respect to these proceedings or  
9 do so at Your Honor's convenience.

10 THE COURT: You may do it right now.

11 MR. BECKETT: Thank you. Your Honor, I think  
12 that part of the dispute between the debtor and the secured  
13 lender comes from the fact that they're talking about two  
14 different things. I'd like to go back to Mr. Patten's  
15 comment at the beginning of his presentation where he  
16 identified the law with the four elements of when a  
17 committee may sue derivatively on behalf of the debtor.  
18 And I think his description of the law is generally  
19 correct.

20 And I submit, Your Honor, that that's not the  
21 situation here. The situation here is different because  
22 the notes, and it might be as if the causes of action in a  
23 Chapter 5 avoidance action -- the notes in this  
24 circumstance are subject to, for now, without prejudice, a  
25 perfected first security interest held by Credit Suisse.

1 And so the question is not: When does the committee act  
2 derivatively when the debtor fails to do so?

3 That's a different situation. This situation is:  
4 What are a creditor's rights when it has a perfected  
5 interest in a piece of collateral that it wants to  
6 monetize?

7 Credit Suisse has said that cause exists to lift  
8 the stay so it can go forward with monetizing, collecting  
9 the notes. The committee, as a general principle, agrees  
10 with this. The issues raised by the notes are at the heart  
11 of the issues that a lot of people want answers to in  
12 connection with this case. Very simply: Where did the  
13 proceeds of the Credit Suisse loan go?

14 The notes do not answer that question in its  
15 entirety. In the first place, as I suggested, the notes  
16 look like \$200 million worth of money of Credit Suisse  
17 proceeds. In addition, Your Honor, the committee believes  
18 that there's another \$68 million of notes that were  
19 representative of amounts previously taken out of the  
20 debtors before the Credit Suisse loan. And so it's about  
21 207 in that could come from the Credit Suisse loan, but  
22 another 68, or so, represented by the notes that had been  
23 taken out previously. That's the disconnect on that point.

24 But my point is: \$200 million on the note side,  
25 that leaves another \$100 million unaccounted for. So the

1 notes are not the entirety of the question. And then,  
2 again, we don't know what happened -- well, we do know a  
3 lot more than we're going to talk about today, but where  
4 did the money go after it got to BGI? There's a lot of  
5 information about where it went. The notes are not the end  
6 of the inquiry; the notes are at the heart of the inquiry.  
7 And my point is: There is cause to get going on the notes  
8 that would constitute cause to lift the stay - (inaudible,  
9 coughing in microphone) - Credit Suisse start to unwind us.

10 And second is the question of monetizing the  
11 notes. Better start that sooner rather than later. Every  
12 party in this interest is looking for cash. And so with  
13 Credit Suisse's argument and, in addition, that on the  
14 grounds of adequate protection, the committee feels  
15 similarly that there is cause to lift the stay so someone  
16 can continue, can proceed against the notes.

17 What I'm doing is saying, "That's very different  
18 from a derivative action with the four elements where the  
19 committee acts derivatively on behalf of the debtor." This  
20 is a question of: Does the creditor have a perfected  
21 interest in collateral and does cause exist to lift the  
22 stay to monetize that?

23 Then the question is: Who should do it?

24 And the committee feels very strongly that the  
25 debtor cannot do it and should not do it. Your Honor has

1 received the evidence sufficient to show that Ms. Blixseth  
2 controls the debtors and BGI controls the debtors and she  
3 controls BGI. And you saw part of the problem this  
4 afternoon in her testimony when she was asked about what  
5 did she, as BGI, intend to do about the notes?

6 And she said, "BGI intends to cooperate. There's  
7 not liquidity now to pay the notes, but we're looking into  
8 it," something like that.

9 And then the question was: Well, what did she,  
10 as Debtor, intend to do?

11 And she didn't get to answer because there was a  
12 proper instruction, "Do not answer that question. That's  
13 attorney-client privilege."

14 And so Ms. Blixseth controls the obligor on the  
15 note and can say, "We're doing the best we can," and is the  
16 obligee on the note and says, "I can't talk about that  
17 right now."

18 Whether or not it poses a conflict, and I agree  
19 it poses an insurmountable conflict, the fact is it just  
20 looks terrible. We don't need in this case to have the  
21 lawyers for the debtors pursuing the entity that is -- that  
22 owns the debtors. There's enough insider allegations, and  
23 this whole Mr. and Mrs. Blixseth drama, and -- you know,  
24 and it's unfortunate and I know it touches people's lives  
25 and, I'm sorry, I don't mean to make fun of it, but that

1 needs to be removed from what is a really, really beautiful  
2 property out there. The property needs to be rehabilitated  
3 and needs to be put back on its feet.

4 And, personally, I don't understand why the  
5 debtors want anything to do with the insider stuff. I  
6 would like to see that removed, and I would like to see  
7 somebody else deal with that. And the debtors need to get  
8 going on a bankruptcy plan. It's a month; it's three  
9 months until the DIP runs out. That's where the debtors'  
10 focus should be and not on these difficult problems  
11 involving insider relationships.

12 And the next question, then, is: Well, if the  
13 debtors can't do it and shouldn't do it, what about Credit  
14 Suisse?

15 I think I speak for almost all of the  
16 constituencies of the case where -- I mean everyone would  
17 say, "We're a little uneasy with Credit Suisse doing that  
18 for itself. It has the property that it's secured by.  
19 Perhaps it would credit bid on the notes and purchase them  
20 for \$10, and that would be the end of that."

21 And in addition, the committee, and maybe others,  
22 do feel that there are issues with the Credit Suisse lien,  
23 and so the committee would have objected to lifting the  
24 stay for Credit Suisse to proceed on the notes; however,  
25 Credit Suisse proposed a solution. And the solution

1 addresses both the committee's concern with Credit Suisse  
2 pursuing the notes and Credit Suisse and the committee's  
3 concern with the debtors persuing the notes.

4           And the solution is that, in name, the committee  
5 will pursue the notes. And it acts more derivatively from  
6 Credit Suisse as a secured lender, Your Honor, than it does  
7 derivatively of the debtor under the circumstances  
8 Mr. Patten alluded to earlier. And there will be advice  
9 and consent from Credit Suisse, but make no question about  
10 it, let there be no question that the committee will be  
11 running the show, the committee will be deciding what needs  
12 to be done and what direction to go. Credit Suisse has an  
13 enormous amount of information and expertise to add to that  
14 as does the ad hoc committee, as does the ad hoc committee  
15 of the Class B holders, as does the debtor. Everybody in  
16 this case has something to add to that.

17           And Mr. Chehi explained it very well: The  
18 proceeds aren't going to disappear anywhere. The proceeds  
19 will be held separate and apart. They will be subject to  
20 the committee's rights, claims, and causes of action  
21 against the Credit Suisse and all of Credit Suisse's  
22 rights, claims, causes of action and everybody else's.  
23 This is: Set the money the aside, hold it safe, and we'll  
24 answer those questions in due course, which will probably  
25 be failure soon, but in due course.



1 I submit that the committee is in a pretty good  
2 position to do this, Your Honor. I have told you before  
3 the committee has 11 members: Five are fairly typical  
4 trade creditor members; five are more like members of the  
5 Yellowstone Club; and one is a members who had settled, who  
6 was a Class B certificate holder, but who had settled  
7 before the case had -- before the bankruptcy cases were  
8 filed.

9 That collection of people has an enormous amount  
10 of information, historical information about what happened  
11 with the money and what has happened with the, what has  
12 happened with the debtor. And so I think that the  
13 committee is in probably already a very good position now  
14 and has collected an enormous amount of information on  
15 these questions and is in a great position to prosecute it,  
16 but again, not in a vacuum, but with the advice and consent  
17 of Credit Suisse and with the input from every other  
18 constituency. The committee has an obligation under 1102  
19 to solicit and take input -- give information and solicit  
20 input and take input from the other creditor  
21 constituencies.

22 And at the end of the day, I think there's cause  
23 to lift the stay. That creates the problem of who  
24 prosecutes the notes. The debtors can't; if the debtors  
25 can, they really should not. That leaves Credit Suisse.

1 The committee has an objection to that. The solution is:  
2 The committee prosecutes the notes with the advice and  
3 consent of Credit Suisse and input from every other party.

4 And, lastly, I want to reiterate something  
5 Mr. Chehi said: If there's any difficulty here, Your  
6 Honor, I'll be right back here, and I know Mr. Chehi will,  
7 as well. If we can't get along, we'll need a modification  
8 of the stipulation or we'll need to call it a day or  
9 somebody needs to enforce it. But I think we are going to  
10 make this work, and I think it's a good experience for a  
11 couple of parties who at loggerheads in this case to have  
12 found a way to work together. And I really do hope that  
13 that spreads, and there are five, six, seven of us who can  
14 do that within the next 30 days.

15 If you have any questions, I'm more than happy to  
16 enter obtain them. Thank you.

17 THE COURT: Thank you, Mr. Beckett.

18 Anyone else before I go to Mr. Patten?

19 MR. WHITMORE: You're asking for people who would  
20 be in favor of the stipulation?

21 THE COURT: Yes.

22 MR. WHITMORE: I guess --

23 THE COURT: Mr. Whitmore, you may address the  
24 Court, if you would like, on that issue.

25 MR. WHITMORE: All right. Your Honor, I think we

1 fall somewhere in the middle here, so I'll try to do my  
2 best to make some order out of my presentation. And I hope  
3 that the timing of my comments is appropriate.

4           We represent an ad hoc group of six Class B  
5 unitholders and the Yellowstone Mountain Club and  
6 Yellowstone Development Company. Together, they are --  
7 each of them own a little bit more than 1 percent of the  
8 equity value in each of these two debtor entities. They  
9 don't have any rights to vote, really. There's a few  
10 things that requires their consent. But, in essence, they  
11 were frozen out of the management of these companies and  
12 feel very aggrieved with respect to what has happened to  
13 their equity stake. They also hold some claims in  
14 connection with their investments. And they're members of  
15 the club and very much want the club to succeed and are  
16 supportive of some kind of solution coming out of these  
17 proceedings.

18           The Class B holders, the ad hoc committee has  
19 objected to the lift-stay in favor of Credit Suisse and has  
20 also objected to the debtors' retention of counsel to  
21 collect the BGI notes. We've also objected to the approval  
22 of the stipulation in its current form.

23           And I guess I would summarize our position with  
24 respect to that by saying -- referring to the end of our  
25 most recent objection saying that the Class B holders do

1 not categorically object to establishing a solution  
2 involving the committee as representative of the estates,  
3 but there needs to be appropriate protection of the  
4 interests of the estates.

5           This would require at least the following: A  
6 full review of the causes of action belonging to the  
7 Yellowstone debtors - this is Yellowstone Mountain Club and  
8 Yellowstone Development company - that are related to the  
9 BGI notes by an estate fiduciary, possibly the committee,  
10 to determine how the estate should best proceed to recover  
11 the divested proceeds -- or the diverted proceeds of the  
12 Credit Suisse loan and other funds, valuable funds that  
13 have been taken out of these estates. And I'd like to --

14           THE COURT: But you concede that that is one of  
15 the functions and part of what the official unsecured  
16 creditors committee should be looking into and  
17 investigating?

18           MR. WHITMORE: Well, I think that we have a  
19 procedural problem here of the first order and that, at the  
20 suggestion of the Court, the Court is entertaining  
21 essentially a lift-stay motion. And I think, through  
22 the --

23           THE COURT: Well, and I'll be honest: You  
24 weren't at the prior hearings we've had on this. The  
25 reason the Court did that was nobody was doing anything

1 with them, and we needed to move --

2 MR. WHITMORE: I think --

3 THE COURT: And now, of course, everybody wants  
4 it done, you know, like it should have been done a month  
5 ago.

6 MR. WHITMORE: Absolutely. I think it's very  
7 evident in reading the very well-thought-out order of the  
8 Court that the Court, in considering whether or not  
9 adequate protection existed in connection with approval of  
10 the DIP loan, looked around at these castles and hundreds  
11 of millions of dollars of promissory notes and  
12 appropriately said, "Well, what's going on with this  
13 stuff?"

14 And I think that is the occasion -- and the  
15 Court's very appropriate question, I think, is it really  
16 prompted two questions in response, you know: "What  
17 claims?" and "Who is going to be pursuing them?"

18 And the Class B unitholders who have been  
19 involved in -- at least Mr. Snow has been involved in some  
20 of the litigation relating to the LeMond case, but the  
21 Class B unitholders are very familiar with a lot of these  
22 issues that have gone on and were very delighted that the  
23 Court has had -- has an opportunity to review the pleadings  
24 that have been filed in the LeMond case because I think the  
25 Court will get a sense for the complexity of these issues

1 in connection with those pleadings.

2 THE COURT: Okay. So is Mr. Snow a part of that,  
3 or is there a separate litigation going on in Virginia  
4 City?

5 MR. WHITMORE: The answer, Your Honor, is that we  
6 generally represent the non-settling Class B unitholders  
7 who are not parties to that litigation. The one exception  
8 is that Mr. Snow intervened in the LeMond case, but the  
9 other Class B unitholders in connection with that reached a  
10 settlement and I believe either partially or completely  
11 received money in exchange for their -- or the promise of  
12 money in exchange for their Class B units.

13 THE COURT: Okay, thank you.

14 MR. WHITMORE: So that's where we sit with there.  
15 So the two questions that the Court has really caused to be  
16 asked, the "what" and the "who" -- we're seeing a lot of  
17 people seizing on the BGI notes, and that's what the Court  
18 referred to in addition to the castle that caught your  
19 attention in the order. But the BGI notes are just buried  
20 in the middle of a morass of complicated claims. There are  
21 30 causes of action alleged in the LeMond case, and you can  
22 see the claims and you can see the responses of the debtors  
23 that include Yellowstone Club World, and so forth.

24 So the claims -- to reach the conclusion that the  
25 correct thing to do is to run out right now and start a

1 lawsuit or make demand and start a lawsuit on an entity  
2 that doesn't have any money - just, you know, may have some  
3 indirect interests in some things - as the solution to this  
4 whole problem is not a very thoughtful response by the  
5 professionals in this case, I think, to the question the  
6 Court's asking, the "what" question.

7 I think that some serious homework needs to be  
8 done here on behalf of the professionals who want to step  
9 up and say, "I'll be the fiduciary for the estate, and I'll  
10 look after everybody's interest," to look at the claims.  
11 Well, what are the derivative claims that this -- that  
12 these companies have relating to the hundreds of millions  
13 of dollars of assets that have been diverted?

14 You had a company -- or two companies that  
15 together owned this business, and they owned a mountain,  
16 essentially, free and clear of liens. They went and  
17 leveraged it up and apparently took all the money. And  
18 there's a very complicated series of transactions made more  
19 complicated by a divorce and a split-up of property and a  
20 liquidity crisis and probably some transfers relating to  
21 that.

22 THE COURT: You know, Mr. Whitmore, I mean this  
23 is the stuff -- these are the items, the "what", that  
24 professionals need to be dealing with in this because -- in  
25 order to make this thing succeed at all.

1 I mean there's got to be somebody looking at the  
2 whole picture here. And that's what's been troubling me,  
3 is that, "Is there?" and, "What claims are out there?"  
4 which you've raised. And you've got 30 claims that have  
5 been alleged, some which may have merit, some which may  
6 not. But we don't know -- I don't know at this point.  
7 Nothing's before me.

8 Obviously, I know Mr. Beckett, on behalf of the  
9 unsecured creditors committee, I'm sure, is looking and  
10 investigating and finding out what is and what isn't valid  
11 under the authority of the committee, as have you for the  
12 ad hoc. So I think that that's stuff that needs to be done  
13 to find out what is out there.

14 I mean are we just looking at a shell, and we're  
15 just wasting a lot of time and money that's ultimately  
16 going to go down the tube some way, or is there real  
17 success that can be achieved here? And that's, I guess,  
18 where I think the professionals at this point need to be  
19 focusing in order to get any recovery at all, whether it be  
20 through a plan or through other collections.

21 So, anyway, I appreciate your thoughtful comments  
22 about that and Mr. Beckett's comments, as well. I know  
23 Mr. Chehi has touched on this and I don't want to take  
24 anything away from Credit Suisse, but I know Credit Suisse  
25 has a primary objective as well as trying to recover monies



1 that they are owed as well as, maybe to the exclusion of  
2 everybody else that might be owed money, they'd like to get  
3 theirs first.

4 I'm not taking away from Credit Suisse and what  
5 you have presented because I think all of you have done an  
6 admirable job of trying to bring matters before this Court.  
7 I know CrossHarbor and Mr. Moore, everybody has been  
8 prepared, astute, thoughtful about what's going on, and I  
9 think that's very important for this case. Whether it  
10 succeeds or doesn't succeed, that has to occur.

11 MR. WHITMORE: So at any rate, Your Honor, the  
12 derivative claims that may belong to these two debtors may  
13 be incredibly valuable. They could -- if assets are  
14 properly pursued, if the people who, you know, breach their  
15 fiduciary duties or aided and abetted in that or involved  
16 in conspiracies, if these things can be run to ground, this  
17 case, you could be dealing with hundreds of millions of  
18 dollars, potentially, of value coming back into these  
19 estates. And that could be the difference between this  
20 case being a disaster and this case being a very, very  
21 successful case.

22 So we're responding and have responded in our  
23 objections a little bit to what we consider to be kind of a  
24 shoot, ready, aim approach on the BGI notes, and are very  
25 much asking the Court to -- when it looks at the

1 stipulation -- and we'll get to this in a second because  
2 the stipulation is really neither fish nor fowl. I mean I  
3 hear the committee saying on the one hand, "Yes, I'm a  
4 fiduciary enough for the Court to be comfortable that  
5 everything is going to be okay," but the stipulation is, at  
6 bottom, a terrible muddle between about what the rights and  
7 duties are. I mean it's quite clear the rights and duties  
8 of a secured creditor, if it gets the stay lifted or stay  
9 modified, is to liquidate the collateral in a commercially  
10 reasonable manner. That's what its duties are going to be.  
11 The rights and duties of the creditors committee, I  
12 believe, may depend -- I mean if the Court decides to grant  
13 standing to the creditors committee, I think that that,  
14 that grant under the circumstances of this case where a  
15 possible equity, favorable equity outcome may occur should  
16 be conditioned upon the committee accepting responsibility  
17 to pursue a designated set of claims - (inaudible, coughing  
18 in microphone) - come to the Court and said, "I want to go  
19 get the money this way on behalf of the estates, period;  
20 not just on behalf of the unsecured creditors."

21 So we have some concerns about the secured  
22 creditor perhaps for, you know, obviously tactical reasons,  
23 but beyond that, you know, certainly, if the mountain is  
24 worth enough so that they're covered, they may not have the  
25 greatest incentive to maximize recovery as this drags on.

1           The unsecured creditors -- this case doesn't have  
2   an infinite amount of unsecured claims. And there is a  
3   hope and expectation on the part of these unitholders that  
4   there may be -- in addition to a great club to be a member  
5   of going forward, there may be some value to, to their  
6   equity investment. So we very much would ask the Court to  
7   open the "what" question up for reexamination and perhaps  
8   have a hearing about that at the appropriate time after  
9   people have done some homework. And Mr. James, I think,  
10   correctly pointed out that he hadn't really thought about  
11   whether there was anything else to do other than, you know,  
12   go after the notes, and there might be.

13           The ad hoc committee absolutely concurs with the  
14   judgment that the debtors in possessions here are totally  
15   impaired and cannot be appropriately put in the position of  
16   acting as a fiduciary to maximize the recoveries. I mean  
17   the situation here is that, essentially, these same  
18   insiders and the various entities that they have created  
19   have taken hundreds of millions of dollars out of this  
20   company and in inappropriate ways. And however earnest and  
21   appropriate the professionals may be that they hire,  
22   they'll be caught in a terrible ethical morass almost  
23   immediately and nothing can be expected to happen. So I  
24   certainly concur with Credit Suisse that that is a problem.

25           And we're kind of turning to the next question of

1 "who". We're open, the ad hoc committee is open to a  
2 solution here. If people don't want to go down the road of  
3 getting a trustee appointed and they think that would be  
4 destructive to the dynamics of the case for some other  
5 reason and want to find a way to have an estate fiduciary  
6 start pursuing these claims with the idea, perhaps, when a  
7 plan gets confirmed, the claims will be transferred to some  
8 sort of liquidating trust that can be pursued by -- on  
9 behalf of creditors and/or equity holders following  
10 confirmation. But the question of "who", we're open on it  
11 provided that it is somebody who has a fiduciary duty to  
12 act on behalf of all the constituencies in the case. Other  
13 things wrong with the current stipulation include the need  
14 to place adequate controls on the powers and prerogatives  
15 of Credit Suisse.

16 Credit Suisse, I don't think the stipulation is  
17 very clear about who was running the show. I think it  
18 sounds sort of like a couple of captains on a ship and  
19 their suggestion is that they're going to reach consensus  
20 and be cooperative. But there is a possibility of -- I  
21 mean there's a fundamental question of really: Who's in  
22 charge here?

23 Is this going to be run by the committee on  
24 behalf of the estate, on behalf of all constituencies in  
25 the estate with some potential limitations imposed by

1 Credit Suisse, or is Credit Suisse really getting the stay  
2 modified and the committees there to just sort of make sure  
3 that nothing too bad happens? That lack of clarity is not  
4 appropriate.

5           These claims are worth hundreds of millions of  
6 dollars, they're very complicated, and they need to be  
7 owned and controlled by somebody who is accountable to this  
8 estate for doing a good job or doing a bad job in trying to  
9 get a recovery. And you don't want to have a diffusion of  
10 responsibility where Credit Suisse is sort of a secured  
11 creditor with limited duties and the committee hasn't been  
12 clearly put in the hot seat of having to run these things  
13 and be responsible for the decisions concerning these  
14 things.

15           I certainly didn't find anywhere - perhaps I  
16 missed it in the stipulation - the sentence that if they  
17 didn't get along and Credit Suisse began to use its veto  
18 power in a way that was troubling to the committee, that  
19 they would just come to the Court and it would get  
20 resolved.

21           THE COURT: Well, I think that was kind of the  
22 purposes of what Paragraph 9 --

23           MR. WHITMORE: When you read Paragraph 9,  
24 perhaps -- I didn't see that in there. To me, Paragraph 9  
25 doesn't say that.

1 THE COURT: Well, basically, the last sentence  
2 just indicates that it shall not be modified, altered,  
3 amended, or vacated without the prior written consent of  
4 the parties or by order of the Court. So if somebody's in  
5 disagreement, they can bring it before the Court for  
6 clarification and modification.

7 MR. WHITMORE: Okay.

8 THE COURT: And that follows from what Mr. Chehi  
9 said as well as what Mr. Beckett said.

10 MR. WHITMORE: Well, that's good news, then. I  
11 stand corrected. At least with respect to that, that's a  
12 little comfort on that particular point.

13 And then, finally, to the extent that a solution  
14 can be worked out so that the committee, when Credit Suisse  
15 has some opportunity to, to influence and control, I think  
16 that there just needs to be some sort of balance where  
17 there's some sort of equity representation. And I think it  
18 needs to obviously be disinterested equity representation  
19 other than the Blixseths, making sure that when we get into  
20 that value equation about, "Are we trying hard enough to  
21 get the most possible money? Are we trying too hard, and  
22 should we be trying to hit a double here instead of a home  
23 run every time but not just bunt the ball every time" --  
24 so I think that if a process gets created and as the Court  
25 considers the "who" question, not only does it have to be a

1 fiduciary with real responsibilities, but there needs to be  
2 transparency and participation not just by the secured  
3 creditors and the unsecured creditors but also, we believe,  
4 by the equity holders.

5 I have some other comments with respect to why we  
6 don't believe the stay should be lifted. I don't know if  
7 that's really before the Court.

8 THE COURT: Well, in a way, it is. You should  
9 put that in the record if you wish to do so, based on the  
10 order to show cause.

11 MR. WHITMORE: Yes, based on the order to show  
12 cause. I would just make the following notes on that: I  
13 think that a lot of arguments were made under 362(d)(1)  
14 that there was no adequate protection; and, therefore,  
15 cause exists for getting relief from the automatic stay. I  
16 think those arguments were problematic in the sense that  
17 they looked at the notes in isolation and they really  
18 didn't take into account the fact that Credit Suisse's  
19 position will, I think, be best protected by having the  
20 estates do a good job of looking at all the claims that  
21 exist and prosecuting them in some appropriate way rather  
22 than necessarily just running off and trying to collect the  
23 BGI notes. So when you look at adequate protection in the  
24 context of the real situation that they're facing, it's not  
25 at all clear that they're better off going and suing on the

1 BGI notes.

2           And this really brings up a point that's of grave  
3 concern to us, is, is that we may be messing up the  
4 lawsuits that the estates could bring, the derivative  
5 claims, by allowing actions to go forward on the BGI notes.  
6 Those lawsuits, to some extent, will be for the same money  
7 that was wrongfully moved around and ultimately ended up in  
8 castles or islands or people's pockets. So allowing a  
9 lawsuit to go forward in which BGI is named as a defendant  
10 and that claim is pursued in isolation, I have a concern on  
11 behalf of the estates, but I think even Credit Suisse  
12 should have a concern about whether that might negatively  
13 affect the overall appropriate collection of these notes.  
14 So we think that looking at the adequate protection issue  
15 in isolation with respect to these notes is not really the  
16 best way to look at it.

17           We would ask the Court to consider sort of a  
18 balance of harms test under (d)(1) in which you look at the  
19 harm to Credit Suisse of continuing to have the automatic  
20 stay in effect with respect to these notes as opposed to  
21 the harms to the estate. And we think that as long as  
22 there is an effort underway to appropriately recover and  
23 bring back into the estate for everybody's benefit -  
24 probably first for Credit Suisse's benefit, if they can  
25 establish that they don't have problems - would be, would



1 be better for everybody, including them. So on a balance  
2 of harms test under 362(d)(1), we think that there really  
3 is a basis for saying that adequate protection is best seen  
4 in the light -- in light of some appropriate process being  
5 in place as opposed to the stay just being lifted at this  
6 point.

7           The arguments that there was no equity in the  
8 notes because the notes -- these notes, which are sort of  
9 extra collateral, add up to \$270 million, and they're owed  
10 \$307 million, I think -- I'm not sure that that analysis is  
11 correct. I mean they have other collateral. If you take  
12 that sort of argument to the logical extreme, you could  
13 look at every single piece of collateral in isolation and  
14 say, "Well, there's no equity in this particular piece of  
15 collateral because I'm owed \$307 million, and it's only  
16 worth \$2."

17           They have a lot of other collateral. And as the  
18 Court noted in its order, they hadn't been -- certainly  
19 hadn't done a lot, taken a lot of steps with respect to  
20 this collateral previously. So I think it's fair to  
21 characterize it as secondary collateral to the real estate  
22 that they hold as the primary basis for their loans. So I  
23 don't know that under (d)(2) they really win on the no  
24 equity test. And, certainly, the collection of these  
25 claims could be vital to the reorganization effort.

1 THE COURT: Regarding these claims, these claims  
2 that are alleged through the litigation - and I haven't  
3 read the complaint other than what you've referenced in  
4 your questioning or in your argument - are not against any  
5 of the debtors, correct?

6 So there really isn't the need, necessarily, for  
7 any modifications of the stay as it relates to those  
8 claims. Is that a fair statement?

9 MR. WHITMORE: Well, those claims are -- I would  
10 call them a cousin or a relative of the claims I'm talking  
11 about. The claims that are referenced in the complaint are  
12 claims by some equity holders, some "B" unitholders who are  
13 mad because money was taken out of the, out of the company  
14 and they didn't get their share and various things.

15 THE COURT: Yeah. But when you're talking about  
16 claims in general, just generically you're saying there are  
17 other claims, they're not necessarily claims against any of  
18 the debtor entities but of other people or entities.

19 MR. WHITMORE: Yes. There may, there may well be  
20 claims against nondebtor entities for which the stay  
21 wouldn't be applicable.

22 THE COURT: Right. I guess that's my question.

23 MR. WHITMORE: Yeah, that's a fair point. I  
24 think I've really -- I've covered the points on the  
25 stipulation.

1           The ad hoc committee wants the project to be  
2           successful, they want people to do a great job of  
3           reorganizing and persuing these claims appropriately. I  
4           think -- I heard a lot today about -- if I had to choose  
5           between whether I heard more about control versus  
6           collection, I think I heard more about control than I heard  
7           about collection. And that always makes me a little  
8           nervous representing clients who are on the bottom of the,  
9           of the food chain, so --

10           THE COURT: Okay, thank you.

11           MR. WHITMORE: Thank you, Your Honor.

12           THE COURT: Anyone else before I get to  
13           Mr. Patten?

14           MR. ALTER: Your Honor, Jonathan Alter, if I may.

15           THE COURT: Yes.

16           MR. ALTER: I only wanted to speak to the Court  
17           for just a moment.

18           THE COURT: Mr. Alter.

19           MR. ALTER: Thank you. Jonathan Alter on behalf  
20           of the members committee, Your Honor.

21           I note for the record that we recently filed a  
22           Rule 2019 statement indicating a further increase in the  
23           amount of members in our group. Your Honor, I will be very  
24           brief because I thought that the comments and argument made  
25           by Mr. Whitmore were exactly correct.

1           We also agree that those claims should be  
2       pursued, but they should be pursued in a proper manner. We  
3       also agree that the debtor has clearly irreconcilable  
4       conflicts of interest associated with the prosecution of  
5       those claims. We agree that the claims, if pursued - and  
6       we do believe that there should be a pursuit of claims in  
7       this case - should be pursued by a fiduciary on behalf of  
8       the estate. And, certainly, the creditors committee seems  
9       to be the appropriate body to pursue those claims.

10           With respect to the issue of standing, Your  
11       Honor, not only do we believe that standing should be  
12       obtained by the creditors committee in connection with the  
13       pursuit of these BGI notes, but frankly, we believe that  
14       the creditors committee should be aggressively looking to  
15       recover standing to pursue all potential recoveries as part  
16       of a broader plan as articulated by Mr. Whitmore. In fact,  
17       I simply note for the record that the creditors committee  
18       has also -- has already come to the conclusion -- in its  
19       papers, it notes that the December 2000 -- that the 2005  
20       transaction was a fraudulent conveyance under Montana law.  
21       That would seem to suggest that they intend litigation, at  
22       the very minimum, against Credit Suisse.

23           Which, by the way, segues nicely into my next  
24       point, which is: We can see no reason why Credit Suisse  
25       needs to be a party to this stipulation. If the assets and

1 the claims are going to be recovered by an independent  
2 fiduciary, all parties in interest have an interest in that  
3 proceeding fairly and equitably. And we do not believe  
4 that any further adequate protection would be required to  
5 be given to Credit Suisse since the recoveries that would  
6 be obtained would be subject to any lien that they have  
7 which would be a legitimate lien claim.

8 We also, by the way, share the same concern that  
9 Mr. Whitmore had that the stipulation was not at all clear  
10 as to the rights of both parties. It did seem like a  
11 copartnership as opposed to simply Credit Suisse having  
12 some, some notice rights of some kind. So we would very  
13 much like to see that stipulation, which would be so  
14 important, much more carefully drawn; and, frankly, the  
15 references to Credit Suisse deleted from the stipulation so  
16 that a proper fiduciary pursues the claims on behalf of all  
17 parties in interest.

18 THE COURT: So there's really no need for a  
19 stipulation.

20 MR. ALTER: Your Honor, the answer may simply be  
21 as Mr. Whitmore states, that the issue could be resolved by  
22 the creditors committee recovering appropriate standing to  
23 pursue these claims as fiduciaries on behalf of the entire  
24 estate.

25 And, finally, Your Honor, I think the points that

1 were made about cause I think were exactly correct that  
2 Mr. Whitmore made, but I would also had that the comments  
3 that were made by Mr. Chehi that there's a probability of a  
4 default for failing to file a plan by February 13th is just  
5 pure speculation. I don't think that this Court or any of  
6 the parties have any evidence to suggest that this debtor  
7 will be in default on February 13th. And, frankly, we  
8 remain very optimistic and hopeful that the debtors and all  
9 the parties in interest work collaboratively to try to come  
10 up with a solution and a consensual plan by February 13th.  
11 Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Alter.

13 Anyone else before I go to Mr. Patten? He'll be  
14 concluding.

15 TRUSTEE McKAY: Your Honor?

16 THE COURT: Yes, Mr. McKay.

17 TRUSTEE McKAY: Dan McKay for the U.S. Trustee's  
18 Office. Just a couple of comments.

19 It seems the case is proceeding on two tracks,  
20 and I think that's the way it should be. I think everybody  
21 assumes that the plan is going to provide for a sale of the  
22 Yellowstone Club as a going concern, and there's no reason  
23 that I can see that that proposal cannot be put together in  
24 time for a plan to be filed by the February 13th deadline.  
25 And I would assume that given the, the professionals that

1 have been hired, Mr. Greenspan, and so forth, and I think  
2 we should all assume - and if this isn't true, somebody's  
3 going to be held to account for it - that that's being  
4 pursued vigorously and the data room is being repaired and  
5 whatever marketing that's going to be done -- as I  
6 understand it, the plan has to be filed by February 13th,  
7 confirmed by March 31st, but that sale process, I would  
8 assume under the plan, may take longer than that and  
9 probably should in order to appropriately market the  
10 properties.

11 But I think this whole discussion today just  
12 points out the absolute necessity that that sale process be  
13 thoughtful and adequate to expose this property to whatever  
14 market is out there to assure that the greatest recovery  
15 for those assets is made so that we're probably going to  
16 know what the excess claims in this estate -- if that  
17 property sells for less than is sufficient to pay all the  
18 secured creditors in full, if that's the outcome. And I  
19 think people probably assume that it will be the outcome.  
20 But we're going to know what needs to be pursued outside of  
21 that sale process when that sale process concludes because  
22 I can't imagine that settling all of these issues with  
23 regard to these notes and all of the claims that may  
24 surround them is going to be a much longer process than  
25 that.

1 I do agree, I think, with the consensus here that  
2 to step in now and appoint the Chapter 11 trustee is  
3 probably not a workable proposition given the timeline.  
4 Sometimes trustees with limited powers are appointed, but I  
5 think that's a very iffy proposition under the code. And  
6 there is case authority that says that the bankruptcy judge  
7 simply doesn't have the authority to limit the trustee's  
8 powers in that way. It's not provided for in the code.

9 I think that the unsecured creditors committee is  
10 probably the appropriate avenue, and I think anyone's  
11 concerns with regard to its parochial interests I think  
12 should be allayed by the fact that these are estate claims.  
13 And to the extent that the committee takes on the  
14 responsibility to prosecute those claims, it has to do so  
15 from the perspective of these being estate claims and all  
16 of the constituencies that are represented because of that.

17 So I'm hoping -- I guess my message, if I'm  
18 allowed to send one today, is: I'm hoping the debtors are  
19 working diligently with regard to the plan at least as far  
20 as it will deal with the main assets, and that's the  
21 mountain club as a going concern. And I don't see any  
22 reason why that -- an acceptable plan that deals with that  
23 and leaves the issue of collection of all these other  
24 claims to happen in the due course being pursued by whoever  
25 the appropriate entity is to pursue those. And at this



1 point, I see that as being the unsecured creditors  
2 committee.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. McKay. Now to  
5 Mr. Patten, who has concluding remarks.

6 MR. PATTEN: Thank you, Your Honor. I'm trying  
7 to figure out who in the room is my friend and who isn't,  
8 and it's kind of hard.

9 THE COURT: Everybody's looking for, you know,  
10 the global resolution of this that makes it all successful  
11 for everybody.

12 MR. PATTEN: I think Mr. Chehi identified why the  
13 stay ought not be lifted - and Mr. Whitmore alluded to  
14 this, too - and that is: If the stay is lifted, then  
15 Credit Suisse has to foreclose its lien on the collateral.  
16 It doesn't mean that it --

17 THE COURT: Well, and pursue whatever  
18 nonbankruptcy remedies are available, which is -  
19 (inaudible) - nothing.

20 MR. PATTEN: Well, yes. But I don't think that  
21 it's necessarily that it can go out to collect the notes  
22 itself. It's got to sell the notes or dispose of them in a  
23 commercially reasonable fashion. That isn't necessarily  
24 the same as suing on the notes. So for that reason alone,  
25 Your Honor, I would think that lifting the stay is not the

1 remedy that we want to follow. There's reasons -- if  
2 lifting the stay is a consideration, there's reasons not to  
3 do it. And I don't want to repeat largely what  
4 Mr. Whitmore said, but it's speculation as to whether the  
5 debtor is not going to file a plan on time. There is other  
6 collateral that Credit Suisse is ignoring when it's looking  
7 at these notes and determining whether there's any equity  
8 in these notes.

9 And at this stage, there's all sorts of -- now  
10 this hearing has kind of morphed. Now we're talking about  
11 some derivative claims and avoidance actions that are  
12 property of the estate, and they're properly prosecuted by  
13 the debtors in possession. All of these things may be an  
14 essential part of the bankruptcy plan. And to remove this  
15 property from the estate prior to the development and  
16 submission of a bankruptcy plan is going to start tying our  
17 hands, and I think that that's not appropriate.

18 There's a lot of speculation as to the ability of  
19 the debtor in possession to collect these notes. The same  
20 inherent conflicts exist in many cases, Your Honor.  
21 Preferential transfers and fraudulent transfers often  
22 involve insiders. Prosecution of those claims does not  
23 automatically create conflicts of interest. We're  
24 particularly aware the debtor in possession is taking steps  
25 to recover the avoidable transfer and, in that sense, these

1 promissory notes are much the same as a preferential  
2 transfer or fraudulent conveyance.

3           So until there's something more than speculation  
4 about conflicts of interest, until there's some action or  
5 something done by the debtors in possession that  
6 demonstrate that they're not adhering to their fiduciary  
7 duty to all of the various entities involved here, all of  
8 the parties in interest, and all of the different  
9 constituencies, then that ought to remain an asset that the  
10 debtors in possession manage in the ordinary course and  
11 prosecute to collect.

12           There's clearly disagreement among virtually  
13 everybody here about what should be done. All of the  
14 powers to collect all of the avoidance actions that are  
15 somehow getting sucked into this hearing should be, at  
16 least in the first instance, prosecuted by the debtor in  
17 possession until it is shown to the Court that the debtor  
18 in possession cannot do that. That hasn't been shown. All  
19 that's been shown is guesswork and supposition. And so  
20 until there's something that demonstrates to the Court that  
21 that can't be done, the Court should not remove those  
22 powers from the debtor.

23           The debtor is to look out for all of the  
24 constituencies: The unsecured creditors, the Class B  
25 members, the secured creditors. That's what we're supposed

1 to do, that's what we understand our obligations are, and I  
2 think that that's something that we can do and will do and  
3 intend to do. And toward that end, we've started the  
4 collection process. And Mr. -- the Class B members may not  
5 like the avenues that we're taking, but we're -- we've  
6 started taking the action. And so it seems, Your Honor,  
7 that it is premature to take that power from the debtors in  
8 possession. It will hamstring them in fashioning a  
9 bankruptcy plan. The plan has to be filed in about a  
10 month's time. And, certainly, until the plan is filed and  
11 we know how these claims, and so forth, are treated, those  
12 things should remain in the control of the debtors in  
13 possession.

14 THE COURT: Thank you, Mr. Patten. Well, for the  
15 record, I haven't missed any other remaining issues that  
16 were scheduled for today that haven't been heard, right?  
17 We've heard everything, okay.

18 Given the testimony presented today and the  
19 exhibits and the record before me, I find that the pursuit  
20 of some of these claims and the promissory notes, given the  
21 interrelationship between the entities, creates a profound  
22 problem or an appearance of impropriety or conflict between  
23 the owner/controller of the debtors as well as BGI. And I  
24 think it puts Ms. Blixseth in a really difficult situation  
25 because she's kind of on both sides of this. Whether

1 there's anything, anything that she is doing or not doing  
2 that would impact the success of this case, I can't say  
3 that, but I think it just puts her in an extremely  
4 difficult position in being able to pursue claims that may  
5 be against herself or related entities. I think that's an  
6 extremely difficult position to be in.

7 And as a result of that, I think that the next  
8 person, the "who", is really the official unsecured  
9 creditors committee to assist the debtor in some of  
10 these -- and to take the lead on some of these claims,  
11 notes, investigation, formulation of a plan to assist the  
12 debtor in proceeding and collecting assets for the estate  
13 as the creditors committee does in any event. That's the  
14 duties that are set forth under 110 -- what, 1103. So I  
15 think that's what the committee should do. They're the  
16 official creditors committee, and they should pursue that.

17 As it relates to my order to show cause and the  
18 modification, I have a lot of discretion with  
19 modifications. And this is a very limited modification  
20 because I want Credit Suisse to be involved in looking at  
21 those notes and pursuing, in conjunction with the official  
22 unsecured creditors committee, collection on those notes  
23 and their collateral but not to the prejudice or the  
24 jeopardy of other claims that may be out there that could  
25 also be of benefit in the bigger picture rather than just

1 focusing on, "Well, what's our collateral? Let's go and  
2 get it regardless of what happens to everything else."

3 Because I think what I see in this, based upon  
4 the facts before me, it's going to take a big-picture  
5 solution for this to remain viable. So from that  
6 standpoint, I want the official creditors committee and  
7 Credit Suisse to work in conjunction on the notes, not  
8 losing sight of other claims that may impact the  
9 collections of those notes, as well.

10 As it relates to the stipulation, I guess I want  
11 to make it very clear in the stipulation that if any issue  
12 comes up for which there is dispute that's not reconciled  
13 and that would have prejudice to any other interest party  
14 in this proceeding, I want to know about it immediately by  
15 motion, by notice, or whatever. Because I just -- I think  
16 we've got to maintain a process here in order to make this  
17 all work. So to that extent -- and I'll issue an order on  
18 this rather than just having a bench order. But to that  
19 extent, I want -- there will be some modification of the  
20 stay for that purpose.

21 Now, as it relates to the application and the  
22 appointment of Mr. James and his law firm for pursuing the  
23 notes on behalf of the estate, I'm going to vacate that  
24 order of appointment and employment because I think, based  
25 on the testimony before me, with the interrelated controls

1 of the entities, it places Mr. James in an extremely  
2 difficult position if any conflict at all comes up or even  
3 the appearance of conflict comes up in how he proceeds in  
4 trying to do any collection. And so I'm going to vacate  
5 that order, but I am going to allow him to this date,  
6 through to this date an administrative claim that he may  
7 file for professional fees based upon his prior  
8 appointment. I think that's only fair to him, given the  
9 appointment by this Court. So that will be effective as of  
10 this date.

11 MR. PATTEN: Your Honor?

12 THE COURT: Yes, Mr. Patten.

13 MR. PATTEN: Could I ask for a clarification?

14 THE COURT: Yes.

15 MR. PATTEN: I think it's critical that the  
16 debtors in possession are aware of and have the knowledge  
17 that's uncovered during the course of any collection  
18 activity --

19 THE COURT: Yes, let me clarify on that. I  
20 expect the -- Mr. Beckett, his staff, and the official  
21 unsecured creditors committee to maintain constant  
22 interaction with you, as they have to, in order to  
23 investigate, to help formulate, to notify you of what  
24 claims there are and where they're at.

25 MR. PATTEN: Well, and toward that end, Your

1 Honor, if there's depositions taken or discovery, written  
2 discovery undertaken, will the debtors in possession be  
3 allowed to sit in at the depositions and hear the evidence  
4 that's brought out in the depositions and get copies of the  
5 discovery that's produced?

6 THE COURT: You know, I guess offhand I don't  
7 have an objection to that, but there may be instances that  
8 I'm not aware of or there may be facts or claims that I'm  
9 not aware of that could be impeded because of that. I  
10 don't know. And I guess what I'm going to ask is in that  
11 regard, if there are depositions scheduled and there is the  
12 exclusion of the debtor in possession, that, certainly, you  
13 have a right to notify the Court. And before that  
14 deposition's held, determination will be made as to whether  
15 you should or shouldn't, based upon what the purpose of  
16 that deposition is.

17 MR. PATTEN: Very well.

18 THE COURT: I do want to keep you informed, and I  
19 think that's important in the whole process.

20 As it relates to the stipulation, in most part, I  
21 don't have a problem with it, but I do have -- I just want  
22 to make clear that if there's any dispute over the  
23 stipulation, that this Court retains control to resolve any  
24 issue or dispute or activity under that stipulation. And I  
25 think that was clear from what was said.



1           MR. CHEHI: And that goes without saying. We'll  
2 say it on the record right now - and I'm sure Mr. Beckett  
3 will agree - that that was our intention. We had clear  
4 discussion about this before anybody signed that  
5 stipulation that, to the extent that there are  
6 disagreements that, you know, need to be resolved because,  
7 for instance, they go in a direction that we think they  
8 shouldn't be going in and they're going to say, "Well,  
9 you're not consenting to it," they're going to come back to  
10 court or we'll jointly come back to the Court and ask for a  
11 resolution of it.

12           THE COURT: And I guess I just want to make  
13 sure -- we're under a really short timeline in this case,  
14 as you know. And I'm going to, you know, expedite things  
15 to the extent I can, but I'm also not going to expect  
16 matters before me that don't have merit, either, just to  
17 slow this process up. And I'm not suggesting that would  
18 ever occur, but --

19           MR. CHEHI: We don't expect to be bringing in,  
20 you know, things in the sort of garden variety discovery  
21 disputes that the Court doesn't want to hear about. That's  
22 not what we're talking about.

23           THE COURT: Okay.

24           MR. CHEHI: I think Mr. Beckett and I have an  
25 understanding. We would not be proceeding as we have

1 without a clear understanding of the significance of this,  
2 the significance in what this is all about in terms of how  
3 it affects larger recoveries and implications of other  
4 claims. We're all sensitive to that. And we don't want to  
5 do anything to jeopardize recoveries because we're the  
6 beneficiaries of those recoveries as much as anybody.

7 THE COURT: And, certainly, Mr. Beckett and  
8 Mr. Whitmore, I expect, would be cooperating with each  
9 other, as well, because you're all unsecured in any event.

10 MR. WHITMORE: Yes, Your Honor. If the Court as  
11 it fashions its order could be thoughtful of including some  
12 duty on the part of the committee to be open with respect  
13 to the ad hoc group of Class B holders and advise and  
14 consult with respect to the prosecution of the claims, I  
15 think that it would be beneficial to the process.

16 THE COURT: Well, certainly, I want to -- you  
17 know, through the investigative powers of the official  
18 committee, obviously I would expect all parties to work  
19 with them and cooperatively in providing information,  
20 claims, background, whatever is necessary so that they  
21 can -- so that the committee can thoughtfully proceed on a  
22 basis after consulting with the players.

23 We'll issue a formal order on these matters, but  
24 I wanted to let you know before you left where you all will  
25 be on these matters. Because, you know, we're a month

1 away. We have hearings on the 10th of February, again,  
2 scheduled here; hearings in Missoula on the, on the 12th;  
3 Great Falls on the 13th; and then Billings, I guess, is the  
4 17th. So it kind of gives you a timeline of where we're  
5 at. Most of those hearings will be held in that week  
6 period.

7 And then I have a -- just so you know, I'll be,  
8 I'll be at the Idaho CLE toward the end of the week of the  
9 16th. So, you know, I'm always available, but some times  
10 are more convenient than others. But this case is very  
11 important, and I don't want things to get bogged down. If  
12 there are any issues at all, I want them brought to my  
13 attention immediately, and we'll get them set as quickly as  
14 possible for the issues that are before us.

15 So with that, we'll be in recess.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the electronic recording of the proceedings in the  
above-entitled matter, all done to the best of my skill and  
ability.

\_\_\_\_\_  
Jonny B. Nordhagen